The STATE and GOVERNMENT

JEREMIAH S. YOUNG

The National Social Science Series

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THE STATE AND GOVERNMENT

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EDITOR'S PREFACE

A NUMBER of proposals have been put forward here and there in the country in speeches of prominent men and in the platforms of political parties that point to an appreciable misunderstanding of the principles of government as developed in the process of our history. In fact, this misunderstanding is a serious matter, involving, as it does, the practice of government and the rights of citizens. Professor Young has written an unusually clear and readable book on the state and government that has in mind the fogginess of the everyday man about government. The title was presented as one of the first volumes of the series, because a knowledge of government is fundamental. It is a real satisfaction to announce the completion of the book and its appearance as a part of the original plan.

F. L. M.

AUTHOR'S PREFACE

THIS book is intended for the general reader, not for the specialist, and should be judged accordingly. It does not purport to be a sketchy description of present-day states and governments discussed from the comparative point of view; yet the hope is indulged that sufficient illustrative material has been used to make clear the underlying principles of the state, and its agent the government.

I frankly acknowledge my indebtedness to the authors whose books are listed in the list of References.

This volume is to be supplemented at an early date with another on social and economic legislation, which will emphasize the fundamental principles of the state's police power.

Minneapolis, J. S. Y.
December, 1916.

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Part One: The State

THE STATE AND GOVERNMENT

CHAPTER I

HISTORICAL BASIS OF THE STATE

THE state is a body of people politically organized, inhabiting a definite territory, independent of outside control, and having a government and fundamental law, generally the result of popular choice. The chief elements of the state are: (1) a politically organized people; (2) a definite territory over which jurisdiction extends; (3) complete and final control over this territory, which means independence of all outside interference; (4) a government which is the agent of the state, and therefore, at least to a limited extent, the choice of the people; (5) laws, some of which are usually made by the people directly and some by the government, which acts as the agent or representative of the people.

The state did not come into existence full-fledged at a given time or place, but through gradual association. The tendency of all life, vegetable and animal, is to associate, and the formation of the state is a good example of this associational tend-

ency. The association was presumably unconscious at first, and grew by a very irregular course, beginning with family and religious relationships, then becoming more and more definite and purposeful, until it assumed political forms with corresponding theories or explanations as to the origin and reason for existence. The different forms taken by the state constitute the objective or concrete side of the subject, while the theories or attempted explanations of these forms constitute the subjective.

1. The Primitive State

Reserving for the present the theories of the origin of the state, history first records the state as appearing in rudimentary form in the warm climates. Crude state forms undoubtedly existed in the western world among the Aztecs, Incas, and Peruvians; but from the standpoint of connected history the states were first found in the East — in the great river valleys such as the Nile, the Yangtse-kiang, the Ganges, and the Euphrates. The warm climate and fertile soil caused men to collect in these river valleys; consequently the close contact among these groups brought about the necessity for regulating human relationships. Even primitive man learned the necessity of obedience and realized that the state is the best medium for this purpose.

Boundless resources did not develop initiative and energy, but induced conservatism; vast populations led to social stratification — castes and despotism based upon slavery; great stretches of territory led to the imperial form of state which ruthlessly

crushed individualism and local interest. The first state was presumably based on conquest, slavery, caste, rigid customs, and monotonous uniformity, with little to commend it to modern consideration; but in spite of defects it taught men the value of authority and obedience.

2. The City-State

The primitive state had its home in Asia; but as civilization advanced westward, the city-state made its appearance in the two important peninsulas of the Mediterranean, namely, the Balkan peninsula and the Italian peninsula. In the first, the Greek city-state found its home; in the second, the Roman city-state.

The Balkan peninsula has a mild and temperate climate, beautiful mountains, and rich valleys, with numerous islands in close proximity in the Mediterranean. The climate and physical environment produced a progressive and active mental attitude. The areas of land are broken up into small units as compared with the vast, monotonous stretches in Asia. These small units with their mountains and valleys were capable of easy defense, yet, because of proximity to the sea, they yielded products that developed a commerce with Asia and established a system of colonies. The nature of the land units led clans held together by family relation and religion to form some communities about an acropolis or easily defended hill. As these communities grew there was a development of an intense, patriotic, political life that centered in the city. The transi-

tion was from patriarch to king, from king to a council of chiefs, and from a council of chiefs to an assembly of citizens. The Greek word *polis* meant the power of the state or the power of the city, because the city was the state and the state was the city. This power of the city represented the highest of human relations. We derive several words from the old Greek word *polis*. Some of these derivatives are "politics," "politician," "political," "policeman," etc. Our word "citizen" also goes back to the days of the Greek city-state. It meant to the Greek a dweller in a city who had political power. Persons who were not citizens were dubbed barbarians.

Although these cities were included within one peninsula, they never united except in loose confederations, because of the numerous land units and internal jealousies. The only real unit they ever established was for opposition to military aggression from Asia. It was the lack of unity which prevented effective organization. The small Greek city-states emphasized individual liberty for the citizen and democratic self-government; but they were finally overcome by Macedonia and Rome.

In the Italian peninsula also the small city-state was found. The tribal organizations were a good nucleus for it. In this peninsula there was practically the same development of the small city center as was found in the Balkan peninsula. Political life became intense in the small center which took the name *urbs*. The people distinguished between the

homo urbanus or town man, and the *homo rusticus* or country man. Those that lived outside the *urbs*, or town, were called aliens. We derive such words as urban, urbane, urbanity, and suburb from the Roman word *urbs*.

These city-states were well adapted to small territorial units and fostered democracy and self-government.

3. The Roman Imperial State

The city of Rome was formed from a group of tribes occupying several hills near the Tiber, the chief river of the Italian peninsula. The Apennine mountains on the eastern side of the peninsula, and the Alps mountains on the north, welded these people into a unity that, when complete, sent the people that had been accustomed to the city-state out to the south through Sicily to Africa and thence westward to Spain and Gaul. Thus military conquests and internal dissensions enlarged the state from a city-state to a republic, because the city-state is well adapted to a small area only, and the people at that time were not capable of operating a democracy over large areas. Besides, the conquest of numerous peoples with many different customs demanded unity, organization, and law. The Roman people, having expanded over the peninsula, then into Sicily, Carthage, Spain, and Gaul, swept Greece and the East under their authority, made the Mediterranean a Roman lake surrounded by Roman territory, and adopted the imperial form of state supported by the army.

This form of state at that time seemed the best method of binding widely scattered domains into a state capable of compelling obedience to political authority. Democracy and self-government were crushed by the Roman imperial state. The idea of political authority that is country-wide and a citizenship that is not merely personal came into existence. The Roman imperial state gave unity, law, order, concentration of authority, and definite, centralized organization. Its power lasted five hundred years in the West and fifteen hundred years in the East; its form of government was copied by the Christian church; its policy of municipal administration still exists. The Holy Roman Empire, which lasted until 1806, was its lineal, although weakened, descendant, and its colonial administration is still in use by the great colonizing powers.

4. The Feudal State

The extension of the Roman power until it became imperial carried with it the elements of its own destruction. Among these elements may be mentioned the constantly widening frontier difficult to defend; the admission of newly incorporated peoples into the army; the suppression of democracy and liberty for the sake of unity, centralized administration, and sovereign organization. The imperial power shifted to the East, but the Roman power in the West was gradually weakened and fell before the onward rush of the Teutons from north of the Alps. The territory was divided among these

northern tribes, thus bringing two different political policies face to face.

These two civilizations, the Roman and the Teuton, tended to neutralize each other at the beginning of the Middle Ages, and produced feudalism, that peculiar system, or rather lack of system, in statehood. In this period, when fusion was needed, confusion resulted, and power passed into the hands of the strong man, who was called the feudal lord, with his retainers, or vassals. The economic system was based on land, which was parceled out among the Teutonic conquerors. Along with the land went political authority, because there was no supreme central government that could command obedience after the fall of Rome.

The result was that Europe was divided into microscopic divisions, each with its own feudal authority. The Christian church had an organization that was copied from the Roman system and survived the fall of Rome. During this period of political confusion and anarchy the church enlarged its power to include the preservation of education, order, a considerable ownership of land, and an accompanying political authority. Here, then, are the elements that made up the feudalistic state: (1) the Teutonic, tribal, rural system that emphasized personal allegiance, or the relation of lord and vassal; (2) the assumption of political power on the part of the church; (3) the Roman centralization and unity that persisted in the form of the Holy Roman Empire, which was organized by

Charlemagne, but which a keen critic has said was neither holy nor Roman nor an empire.

5. The Modern State

Out of the discordant feudal elements the modern state arose. The Crusades, beginning with a religious object, ended by undermining the power of the feudal lords, because they widened economic interests through commerce and industry, thus introducing new forms of wealth. The invention of gunpowder lessened the power of the armored knight. As the masses of the people who had been submerged during the Middle Ages were not capable of political leadership, the absolute monarchy arose in Spain, France, and England. Thus kings became benevolent despots. They struggled first with the feudal lords and won a victory, then with the church, which struggle brought about a differentiation between religion and politics. Finally, there came the contest between the kings and the people for supremacy within the state, which resulted in the triumph of the people and the emergence of the state, emphasizing ethnic and geographical conditions.

From the foregoing it is seen that the state first appeared in the imperial form, which emphasized caste, despotism, rigid custom, and conquest without any real incorporation; then came the city-states in the southern part of Europe, with their intense, patriotic life, which emphasized democracy and self-government. Next there was a return to the imperial form in the later history of Rome,

which emphasized unity, centralization, conquest, incorporation, law, order, and citizenship, based on the idea of territorial jurisdiction. Finally, with the fall of Rome, came the incoherent feudalistic state, which combined religious, economic, and political matters, but which by a slow process ingrafted the Teutonic idea of representation upon the Roman system, with the result that the modern state emerged, founded on the sound basis of nationalism, geographic unity, and representation.

CHAPTER II

THE THEORETICAL BASIS OF THE STATE

STATES have developed as concrete, objective facts; but along with this development, man has treated the state from the subjective side, endeavoring to explain its origin or to justify its existence at any given time, or to propose a plan of future action with reference to the state. This is the purposive or philosophical side of the state. Several different theories have been advanced to explain the origin of the state, among them being the following: (1) the divine theory; (2) the patriarchal or matriarchal theory; (3) the force theory; (4) the utilitarian theory; (5) the organic theory; (6) the social-contract theory; and, finally, (7) the historical or evolutionary theory.

1. The Divine Theory

The people of antiquity conceived of the state as coming directly or indirectly from God or some superhuman force or power external to themselves. They did not clearly differentiate religion and civil power. The first sanction for all law was found in the sacred writings which came by revelation to certain persons who became the representatives of God in their dealings with the people. Civil obe-

dience was thus grounded in religious duty. This theocratic idea was conceived of by the Jews as being a divine delegation of authority, on the one hand, and a direct participation of Jehovah in civil affairs, on the other hand. The Greeks regarded the state as having a divine origin, because they thought all things that were the outgrowth of man's work came from the gods. This was part of their fundamental notion as to the nature of things, and as far as the Romans theorized about the state they followed the philosophy of the Greeks; but the Romans were a practical people and did something to place the state on a logical basis distinct from religion.

The early Christian church at first claimed control over the spiritual interests only. There was assumed to be a clear distinction between the temporal and the spiritual, found in the famous formula, "Render unto Caesar the things which are Caesar's; and unto God the things that are God's." The implication was that the religious and the civil should be kept separate and distinct. The church therefore tendered the individual a sphere of action outside of and superior to the control of the state; finally it gathered to itself power based on the Roman imperial form of government and partially obliterated the distinction between temporal and spiritual affairs. It became the preserver of order, umpired disputes between states and individuals, possessed itself of large holdings in land and money, and raised armies for its own purposes.

These exercises of power brought on the hot contests with temporal rulers, or the struggle between the empire and the papacy. Each of the parties in the contest claimed for itself the original source of power, namely, divine authority and sanction. The leaders of the Lutheran Reformation held to the divine origin of the state, citing the words of Paul: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." The contest between the temporal rulers and the Pope being won by the former, the fight now shifted to the king on the one hand and the people on the other. The French kings and the Stuarts in England claimed a "divinity doth hedge a king"—in other words, that a king ruled by divine right. This pretension was put forth by the parties to the Holy Alliance in Europe in 1815. These later claims were used to exempt the rulers from responsibility to the people, since they claimed to be responsible to God only.

The theory of divine origin for the state is not seriously held by political thinkers at the present time, and the church has been reduced to a position of subordination to the state. The most that can be said in favor of the divine origin of the state is that religion played an important rôle among primitive peoples who regarded their rulers as supported by divine power; in other words, that civil power had a theocratic phase. This gave the churchmen leadership in the state, the people believing that their leaders ruled according to high moral or reli-

gious principles; but the theory is now generally discredited as accounting for the origin of the state.

2. Patriarchal and Matriarchal Theories

It is now universally recognized that the principle of nationality is a strong element in the state. Taking this principle and tracing it back, many writers on political theory assert the origin of the state to be kinship, which accounts for the first forms of social organization that later developed into the conscious state. It is claimed that the basis of union was a group of persons united by blood or family relationship. But much difference of opinion exists as to the form of family life among primitive peoples. McLennan, Jenks, and Morgan hold that polyandry or promiscuity was the earliest form of sex relationship, and that the family was matriarchal, the kinship being traced through the females. No strong claim is made by these writers that the matriarchal family furnished the model upon which the state was based. The main point contended for is that the matriarchal family was the primal form of association, although it was by means of packs or hordes, and that it was antecedent to the patriarchal form of family. On the other hand, such writers as Maine, Donisthorpe, and Duguit contend that the patriarchal form of family was the universal type, based on polygamy which tended to monogamy, and that kinship was traced through the father, and that this form of association served as a model for the necessary solidarity and organization of the state.

According to the patriarchal theory, the family

consisted of the father, his wives, his unmarried daughters, his sons, and their families, if any. Descent was always traced from a common male ancestor, the oldest living male having authority over both person and property of all in the family. This theory affirms that the family expanded into a clan, the clan into a tribe, the tribe into a nation — which is the ethnical basis of the present state. It is contended that the family was ruled by the father, the clan by a leading kinsman, the tribe by a chief, and the nation by a king or governor.

The patriarchal theory seems to be strengthened by the fact that the Jews had the patriarchal family. The early Roman family was patriarchal, with its *patria potestas*. This power of the father found its prototype in that transitional type of feudalism which rested upon lordship and vassalage. The basis of blood or kinship was prominent in the fact that the Jews regarded themselves as an exclusively Jehovah-chosen people, all others being Gentiles; all persons not Greeks were barbarians; all persons not Romans were aliens; and now the principle of nationality is so strong that exclusion laws based on race discrimination are justified by the leading states of the world.

It is claimed that the patriarchal idea of family coherence furnished the basis for political life; that modern kingship, legislative and judicial powers were founded in embryo in the early family. Jenks indicates that allegiance was personal, that government dealt with groups and not with individuals, and that static custom, not law, was the great regulator of life.

It should be remembered that the family is private, the state public; the authority of the father is imposed in a natural way, while in the state it is on the basis of choice or selection, at least to some extent. The family may be temporary and cease to exist, but the state is permanent; the individual is subordinated to a group in a family, but in a state individuals are all assumed to be on a basis of equality. In spite of these fundamental differences at the present time, the state and the early family have many points in common. It cannot be historically proved that the family is the primal social unit from which the state originated; perhaps both existed, at least in rudimentary form, side by side in forms of social control anterior to definite or recorded history.

3. The Force Theory

According to this theory, the physically strong and aggressive captured and enslaved the weak, or compelled submission to a dominant leader who became a military chieftain and then a king. As people became more settled in a particular locality, property accumulated and needed protection as much as life needed it. This called for a sufficient amount of force to compel order and enforce rights. Finally the tribe became a kingdom, and the kingdom an empire. The military factor in states at the present time gives some weight to the force theory, as it cannot be denied that the most characteristic trait of the state today is its power to compel obedience. It is through aggression and conquest

that states have been organized and defended. Witness the "blood-and-iron" policy used in the formation not only of the empires in the past, but also of modern Germany and Italy. Since force plays such a prominent part in the state today, may we not attribute to it a considerable part in the beginning of the state?

The force theory has been accepted as accounting for the origin of the state: (1) by the early church fathers, as they emphasized the corrupt nature of political power as compared with the power of the church; (2) by the individualists, for the purpose of checking the encroachments of political power on individual liberty; (3) by the modern socialists, to show the aggression of the few and the subordination of the many.

4. The Utilitarian Theory

Some undertake to explain the origin of the state on the basis of economic necessity or usefulness, whose object is the general welfare as opposed to the particular welfare of the individual. This view is expressed in Bentham's *Fragment of Government* and Taylor's *The Right of the State to Be.* According to this theory, one individual had the right to rule another in order to preserve his own rights, and, ascending by a progressive scale, he found himself a part of a higher and still higher association until the state was reached, which is the highest impersonal association which is capable of administering justice upon a broad rather than a particular basis. In other words, the highest utility

is reached through association rule, and not individual rule. This theory may be criticized as furnishing an ideal for the state or as assigning a justification for its present existence rather than as giving an account of its origin.

5. *The Organic Theory*

This is an ancient theory held by the Greeks, Romans, and medieval writers. It suffered somewhat of a decline early in the eighteenth century because of the theory that the state is an artificial creation; but it was finally revived in the middle of the nineteenth century and given a strong impetus by the formulation of the theory of organic evolution in the field of biology. According to this theory, a parallelism exists between man and the state. Man is by nature a social or political animal. It is argued that this universal impulse led him to unite with his kind, that the impulse to statehood is imbedded in the nature of man; and, since the impulse for the state is found in the nature of man, the analogy is used to the effect that the state is a natural organism and has its stages of growth, decay, and death. It is claimed that there is a strong resemblance between the state and the animal organism. Each came from natural and not artificial causes, and developed according to laws, and not blind chance. The animal or plant is made up of cells; likewise, the state is composed of cells—that is, the different individuals. The various organs of the state, it is argued, are similar to the organs of the animal body, each having its own function, but

operating in an interdependent and harmonious manner.

The biological theory for the origin and development of the state, while interesting in many ways, is defective. The cell in a biological organism has no independent life or existence apart from the whole; that is, there is but one life. In the state there are many lives. The life of the state is a composite of the units and also a separate, independent life, for each of the individual units has life distinct from the life of the state. In other words, the individual units in the state are not completely merged in the life of the state because the state controls only a part of the total activities of the individual. In the animal organism the life of the whole controls all the parts; but in the state the steady tendency is to make the individual units more and more independent. Further, one living organism is an offspring from another living organism to which it usually bears a strong resemblance; but the state does not secure its vitality in a similar way. Finally, the natural organism develops in a blind, physical way, in accordance with fixed biological law, influenced by environment; while the state is purposive or volitional, and grows in a conscious direction, allowing its individual units a like liberty of conscious development, with only a few restrictions on their activities.

6. The Social-Contract Theory

The underlying principle in this theory is that of covenant or agreement. Man was assumed to be

in a pre-civil or non-political condition called a state of nature, where he had inalienable rights and was unrestricted by any positive law. There was no restraint except that imposed by morals and reason; but this state of nature was found unsatisfactory, for one reason or another, and men agreed among themselves by contract to submit to joint control. This contract by which persons agreed to unite for civil purposes is called the social contract, and was antecedent to another contract called the political contract, or one providing for a ruler or king. It is the second, or governmental, contract that justifies the statement that "governments derive their just powers from the consent of the governed."

The theory is old and is supposed to find justification in the Old Testament, in the writings of the Greeks and Romans, and especially in the Roman doctrine of contracts. Writers in the Middle Ages and the beginning of the early modern period emphasized the second part of the theory, namely, the relation of the people to the government. Four names are most prominently connected with this theory — Hooker, Hobbes, Locke, and Rousseau. The theory is very prominent in the American Declaration of Independence and in the early state constitutions, especially in the bills of rights. It may be safely said to underlie the decisions of the American courts during the first half of the nineteenth century.

The validity of the theory has been vigorously attacked by the most eminent authorities. The theory is not supported by a single authentic instance

of a state coming into existence by a definite voluntary agreement among men who were not already accustomed to political authority. It has been claimed that the Mayflower compact affords an example in support of the theory, but a slight reading of history shows that the framers of this now famous document were not in a "state of nature," but were already politically experienced and indoctrinated. They were trying to establish a new England, and acknowledged allegiance to their "dread sovereign," James I, who had "harried" them out of their native land. The theory is legally deficient, because a contract itself presupposes a pre-existing political organization. It is now known that man in the early stages of society counted for little as an individual. The family-communism and status prevailed. From this it may be concluded that if there is any validity to the theory it is the second part, which has been used to hold the government in check; to extend the state to new lands; to support the doctrine of political revolution; or to justify the making of a constitution by a convention with a popular referendum.

7. The Historical or Evolutionary Theory

Few persons now claim that the state came into existence by divine fiat; by the enlargement of the family; by mere physical or military force; by utility or the general welfare; by the parallelism of biological organism; or by artificial contract at a given time and place. Perhaps each of the six theories has contributed some small share in ex-

plaining the origin and existence of political authority. The best authorities are now substantially agreed that the state is the product of historical evolution. Professor J. W. Burgess states the evolutionary theory as follows:

> The proposition that the state is the product of history means that it is the gradual and continuous development of human society out of a grossly imperfect beginning, through crude but improving forms of manifestation towards a perfect and universal organization of mankind.

CHAPTER III

THE POLITICAL BASIS OF THE STATE — SOVEREIGNTY

THE state has the power to command and compel obedience from all persons and associations of persons within its territorial boundaries. The command takes the form of law, which is the state's method of expressing its will. The agent or agents that issue the command are sovereigns, and the power exercised is sovereignty, which is the most characteristic feature of the state at the present time.

1. Historical Development of Sovereignty

Sovereignty, as now understood, has a comparatively recent origin. With the downfall of Rome the developing idea of sovereignty fell into decline, because the period of the Middle Ages, when the feudal system prevailed, was essentially non-political. There was a return to early and rudimentary forms of political life. Frederick Pollock says:

> The medieval system in Europe was not a system of states in our sense or in the Greek sense. It was a collection of groups held together in the first instance by ties of personal dependence and allegiance, and connected among themselves by personal relations of the same kind on a magnified scale. Lordship and homage,

from the Emperor down to the humblest feudal tenant, were the links in a chain of steel which saved the world from being dissolved into a chaos of jarring fragments. The old unity of the clan had disappeared, and it was only gradually and slowly, as kingdoms were consolidated by strong rulers, that the newer unity of the nation took its place.

The old idea that Roman imperialism was immortal kept up a flickering life in the Holy Roman Empire. This and the secular power of the papacy in political affairs, the doctrine of the law of nature supposed to be superior to all human law, and the fragmentary nature of feudalistic political power, long postponed the rise of equal states with absolute internal power and independence of outside control. The political conception that prevailed during the Middle Ages was personal on the one hand, or vaguely universal and general on the other. The Teutonic invaders parceled out the conquered lands among the different tribes who had, under their tribal chiefs, a general mastery over the territory; but this did not rest on the idea of territorial possession, as the political power of the chief was exercised over people and not over land.

The idea that sovereignty should extend over land as well as over people developed out of (1) the Crusades, which rediscovered the writings of Aristotle and the Roman civil law, with their doctrine of absolutism; and (2) the weakening of the feudal lords through crusading, internal strife, and jealousy, which called for a new set of rulers. These new rulers came forth as absolute monarchs and took to

themselves authority not only over people, but also over property and territory. The conception of territorial sovereignty was to some extent a continuation of a feudal practice which emphasized the combination of personal duties and rights as inseparably bound up or connected with land. During feudal times the "soverain" or sovereign had supreme authority over certain territory and all persons who held land under him or who were attached to land which he governed. It was the downfall of this feudal lord — brought about by improved military methods, alliances, inheritance, and marriage — that substituted the king, who became known as a sovereign or the possessor of sovereignty in the state. The next step was through the growing power of the people, who gradually but surely made the king not the sovereign, but the agent of the sovereign, the state. So the idea now is to attach sovereignty not to the government or agent, but to the state itself.

France was the first state to develop a monarchy whose authority was based on the idea of absolutism. Hence some scientific explanation was needed for the new condition of political affairs, and Bodin in 1576 explained that the state had become absolute, with a perpetual, individual power which extended over a definite territory. Grotius a half-century later, in his great work on international law, accepted the idea (1) that states are equal; (2) that they are independent and can deal with each other just as different individuals have the ability to contract; (3) that they have a supreme

and final jurisdiction over their own territory. Here are the fundamental ideas involved in the historical growth of sovereignty.

2. Essentials of Sovereignty

Sovereignty has been defined as follows: (1) by Bodin as the supreme power of the state over citizens and subjects unrestrained by law; (2) by Grotius as the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden; (3) by Duguit as the power of willing and commanding; (4) by Burgess as the absolute, unlimited power over the individual subject and over all associations of subjects. (5) According to Garner, the leading characteristics of sovereignty are perpetuity, comprehensiveness, exclusiveness, absolutism, inalienability, and unity.

(a) Perpetuity. — Sovereignty is perpetual because it is inherent in the state. The government may change in form and in personnel, the state may undergo reorganization, but sovereignty is continuous and readjusts itself to the new situations. So far as the state is concerned, sovereignty is as indestructible as matter and as persistent as force.

(b) Comprehensiveness. — The sovereignty of the state embraces all persons, both natural and legal, and all associations or groups of persons within the territorial limits of the state. The same rule applies to all things within these limits. Indeed, a thing becomes property only by being so endowed

by law, which is the command of sovereign power. The modern view of sovereignty does not admit that there can be a stateless person or thing. There may seem to be a deviation from this principle when the state allows immunity to diplomatic representatives from another state; but this does not vitiate the principle, because the immunity may be withdrawn at any time.

(c) Exclusiveness.—Sovereignty will not allow a state within a state. Such a thing is incompatible with the notion of supreme power. Sovereignty may express itself through many different agencies and there may be grants of power to various local governments, but the state can compel obedience to all of them, or may withdraw the grants of power, because in final analysis there is an ultimate political power in the state.

(d) Absolutism.—Sovereignty, being the supreme power of the state to do anything and everything of a public or political nature, is therefore a primary and not a derived power.

It has been contended by some writers that there are certain limitations on sovereignty, such as the natural rights of man, divine law, international law, constitutional law, and public opinion. Bluntchli contends that the states are subject to the eternal judgments of God; Martens in his discussion of sovereignty recognizes God as a legal superior, and the German writer Schulze says there is above a sovereign the higher moral and natural order, the eternal principle of moral law. In this connection it may be said that the exercise of sovereign powers

deals with rights and their protection. Legally speaking, the state is omnipotent. Sovereignty concerns itself with right in the legal and not ethical sense. It is a legal right only that the state will enforce. Sovereignty confers all legal rights and enforces all corresponding obligations. Even granting that the state is subject to divine law, the question arises, Where is lodged the power to interpret this law? The answer is, In the state. Then, if the state does its own interpreting, there is really no legal limitation.

Again, it is contended by some that sovereignty is limited by the principles of international law and by treaties and agreements made between states; but the parties to international law are sovereign states and reserve the authority to interpret their own rights and obligations to other states. There is no power higher than the state to enforce obligations. The courts interpret and enforce the law of their own state, and in enforcing treaties states remain subject to their own laws and not to a foreign or international will, although they usually do not unnecessarily fly in the face of international public agreement or opinion. Finally, it is contended by some that the sovereignty of the state is limited in the constitution when a definite method of amending this instrument is prescribed or when fundamental immunities are laid down. In reply it may be said that these are not legal restrictions on sovereignty. They have been set aside frequently. Constitutions do not control the state; they control the government which is the agent of the

state. In other words, both constitution and government are created and controlled by sovereignty. The omnipotent political power, then, may and does limit its agent, the government, and this is done legally through the constitution.

There is no inconsistency involved in stating that sovereignty is absolute and may still be influenced or limited. Even despotic rulers are compelled to pay some attention to how their subjects will receive laws. They take into consideration the opinions and general attitude of people in the state toward a proposed law. If rulers do not take the line of least resistance, they at least pursue a middle course, and in the exercise of sovereignty do those things that will elicit, if not ready obedience and affection, at least a tacit acquiescence, because laws must be administered as well as made; but these are external conditions; they are influences, and not political authority, and have a moral, not a legal content.

(e) Inalienability.—The state cannot shift sovereignty and remain a state. The moment sovereignty is alienated, that moment the state ceases. The state may alienate territory, it may construct new governmental machinery, or the existing organs of government may abdicate, but none of these acts is an alienation of authority. Sovereignty resides in the state so long as the state exists, because it is the vital principle of statehood.

(f) Unity.—Since there is no legal power back of sovereignty, and sovereignty is the supreme power in the state, it follows that there cannot be

two supreme wills in the state; therefore sovereignty is indivisible or unitary.

3. Location of Sovereignty

Keeping in mind that sovereignty is the supreme will of the state; that it is perpetual, comprehensive, exclusive, absolute, inalienable, and indivisible, the question arises, Where is this power located and what person or persons can exercise it? The location of sovereignty has occasioned many differences of opinion, many angry disputes, and has even led to civil war in the United States of America.

John Austin, the great English authority, says:

> If a determinate human superior, not in the habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and that society, including the superior, is a society political and independent.

According to this definition, sovereignty is determinately located; that is, any persons that can impose the will of the state exercise the sovereign power.

Exception has been taken to this definition on the ground that it is inadequate; that it is a lawyer's definition and is not sufficiently comprehensive; that it is abstract and formal and does not take into consideration the facts of history, custom, public opinion, and social restraints. Sir Henry Maine, who had several years of experience as a member of the Council of India, where custom is very influential, argues that the source of law is not always

a determinate person and that law does not always take the form of a command. He points out that in the Orient immemorial custom is a strong restraining force and that statutory enactment does not play the rôle it does in the West. In the East most despotic rulers find themselves bound by ancient religious and social customs which are as effectual as a formal enactment by the rulers. President Woodrow Wilson uses a wider term for law than that used by Austin. His conception seems to harmonize the two extremes as stated by Austin and Sir Henry Maine. He says:

> Law is that portion of established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government. These rules may arise from long-standing custom and cooperative action of the whole community, and not merely from any kingly or legislative command.

Even Austin himself recognizes the limitations of his strictly legal definition, and hastens to add: "What the sovereign permits he commands." This would seem to cover the cases of oriental custom and the English common law which are not formally enacted by a determinate body.

Still another variation is brought forward by Professor Dicey, Lord Bryce, and Professor Ritchie, who would add to Austin's definition of sovereignty, which in essence is a lawyer's conception, one which may be called political sovereignty. Dicey says that behind the sovereign which the lawyers recognize there is another sovereign to whom the legal sover-

eign must bow, namely, the electorate. Ritchie thinks this ultimate sovereignty rests in the masses of the people, in the opinions, feelings, and traditions of the past, the needs of the present, and the hopes of the future. He contends that the Czar of Russia rules by the will of the people as much as does the executive of Switzerland. He goes further and says that if the electorate fails, if influence fails, then there may be a final resort to physical force on the part of the people, in which case the people must inevitably triumph because of preponderant physical strength.

The moment the search for the location of sovereignty leaves the legal conception of Austin's determinateness, at that moment it becomes a search for a will-o'-the-wisp. If it is located in the people, how does it express itself in the law? Only about twenty per cent of the total population have the right to vote, and in most cases not more than sixty or seventy per cent of these actually vote. Besides, most elections are decided by a majority or plurality vote. Thus it is seen that all the electorate do not elect. How can the mere choice of representatives without additional action be an expression of the legal will of the state? The electors themselves may be dictated to by some political party boss or spiritual adviser. Do these persons who influence the election have the sovereignty? If it is contended that the electors give a mandate at an election, who is to determine what the mandate is, especially if there are numerous issues and many candidates, with their different personalities? Again, if it is

contended that sovereignty is in the people because in a final appeal to physical force the people must triumph, even here the majority may not win because of ineffective organization and bad leadership. Is it not fair to conclude that popular sovereignty or the sovereignty of the people is a myth? On the one hand, is not what appears to be sovereignty merely influence or public opinion? On the other hand, is it not revolution based on physical force? Neither public opinion nor revolution is legal.

The conclusion seems inevitable that the people as people are sovereign only when they are recognized as a department of the government, because the organized state acts only through governmental agencies. If sovereignty is exercised in a popular way, it is because the legal sovereign is sensitive to popular opinion and custom. These extraneous forces condition or influence sovereignty; but they do not possess or exercise it unless the people have a direct democracy, extensive power of legal instruction and recall, or the right of initiative and referendum.

If the state is a body of people politically organized, having a government which is the agent of these people, and this agent has the power to make and enforce laws, does it not follow that Austin's definition of sovereignty is approximately correct? In other words, sovereignty is located in the determinate persons that express the will of the state in a legal manner. If this is granted, the organs that exercise sovereign authority or that express the will of the state are (1) conventions, when properly

constituted and legally formulating or drafting and promulgating constitutions; (2) the electorate, when exercising the initiative, the referendum, or when voting at an election in which a mandate is clearly given; (3) legislative bodies, when engaged in lawmaking to the exclusion of other matters, which lawmaking may be done in either a constituent or a statutory sense; (4) the chief executive, when participating in making statutes, issuing ordinances to supplement statutes, or when promulgating or granting a constitution on his own initiative; (5) the judiciary, when making and not merely applying the law.

The executive and the judiciary, aside from participating in lawmaking, are not exercising the power of sovereignty. They are not expressing the supreme will of the state. They are merely interpreting and enforcing it.

CHAPTER IV

THE POLITICAL BASIS OF THE STATE — PERSONAL LIBERTY

IF sovereignty is the supreme power of the state over all persons and things within the boundaries of the state, it would seem that personal liberty is endangered. This was undoubtedly true during the developmental period, when the whole power of the state was in the government, or when the state and the government were identical and when politics and religion were practically the same. Personal liberty had little consideration in the face of theocracies and oriental despotism. With the rise of monarchies in modern times the development of the state back of the government grew, and was made somewhat secure in written constitutions which restricted the government.

1. Nature and Scope of Personal Liberty

The proper relation of the individual to individual and to the government has been an age-long, unsettled question. Each individual wishes a sphere of activity in which he is unmolested by both the government and other individuals. He may demand that he be allowed to do what he pleases, that his rights are of his own making, and that he can enforce them himself. But if the individual insists

on exercising his rights as he understands them, the rights of other individuals may be injured or entirely ignored. Only the all-powerful person can do as he pleases; and this is apt to destroy the individual liberty of all others. Hence there arises the need of an umpire as between conflicting ideas of individual liberty. This umpire is found in the political power called sovereignty. Many persons argue that when sovereignty exists liberty declines and when liberty exists anarchy appears; but the opposite is true. Sovereignty and liberty are not opposing terms. It is through the state that the highest welfare of all individuals is reached. This makes it possible for each individual to enjoy a maximum of personal liberty. Sovereignty, then, is the foundation of personal liberty. The positive side of personal liberty consists of a large sphere for the play of self-determination and activity. The negative side is restraint from interference with the rights of others. Personal liberty is of two kinds, civil and political.

(a) Civil Liberty. — The personal liberty which is called civil is practically the same in the great civilized states of the world. It is perhaps best designated and protected in the constitution of the United States of America, and consists of personal rights and property rights.

1. *Personal Rights.* — In the United States of America each individual is under two governments. Therefore, if he has adequate protection for his personal liberty there must be a sphere of personal immunity marked out in the constitution of the

United States as well as in the constitution of the commonwealth. Personal liberty has to do with religion, opinion and its expression, assembly and petition, and fair trial in criminal matters.

Freedom of religion is guaranteed, that is, a person may have any religion he pleases, but his worship must not take the form of open acts or practices which are forbidden by the criminal laws. The people have the right to speak and write freely without censorship on the part of the government. Of course, they are strictly responsible for what they say or write. The people have a right to assemble peaceably and petition the government for a redress of grievances.

The individual is exempt from unjust criminal trial and punishment. The government has criminal jurisdiction over treason and counterfeiting the securities and current coin of the United States, but it is carefully restricted by the constitution in regard to treason. The constitution defines treason, prescribes the method of proving it, and limits the punishment. This prevents arbitrary action on the part of the government. Congress can pass no bill of attainder, which is a legislative conviction without a judicial trial, nor pass an *ex post facto* law, which is a law making an act a crime which was not a crime at the time of its committal, or in any way aggravate the situation to the disadvantage of the accused. The government cannot authorize general warrants of search and arrest, suspend the writ of *habeas corpus* except in time of war, require excessive bail or unreasonably delay the trial of a

person legally under arrest, bring a person to trial on a criminal charge except by an indictment or presentment of the grand jury, try him on a criminal charge except by a jury, or convict him except by a unanimous verdict. The government is prohibited from resorting to arbitrary procedure. The trial must be in the neighborhood where the act was committed, and must not be secret. The accused has the right to counsel, and must be informed of the nature and cause of his arraignment. He has the right to confront the witnesses against him and to compel witnesses who know anything in his favor to attend the trial. He cannot be compelled to testify against himself either orally or by the production of private papers. He cannot twice be tried for the same offense if the jury has agreed. The government cannot deprive the accused of life or liberty without fulfilling all the requirements of due process of law. Finally, the government cannot impose excessive fines or inflict cruel or unusual punishments.

The foregoing constitutional restrictions are against the central government of the United States; but many of these immunities of the individual against the central government are duplicated in the commonwealth. In addition to restraining the central government, the constitution places restrictions on the commonwealths in favor of the individual. No commonwealth can pass a bill of attainder or *ex post facto* law, deprive any person of life or liberty or property without due process of law, deny to any person within its jurisdiction the

equal protection of the law, make or enforce any law which abridges the privileges and immunities of citizens of the United States.

2. Property Rights. — The individual is protected in his property rights. Private property may extend to anything except human beings. The government might exercise its powers in such a way as to oppress the individual in regard to his property, therefore numerous constitutional restrictions are imposed on the government. The government cannot levy taxes on exports; direct taxes must be levied according to population; indirect taxes must be uniform; the taxpayer is further protected in that all revenue bills must originate in the House of Representatives, and no money can be drawn from the public treasury except by appropriation made by law. The government may take the individual's private property under the right of eminent domain, but private property cannot be taken except for a public purpose, and then only after just compensation has been made; and just compensation is a judicial question.

The individual may call on the central government as against the commonwealth government for protection to his private property. The commonwealths cannot levy any imposts on foreign commerce except for inspection, or impose any tonnage duties, tax the lawful agencies or instrumentalities of the central government, make anything but gold and silver coin of the United States a legal tender, or pass a law impairing the obligation of the contract.

The constitutional immunities against both central and commonwealth governments furnish the most complete protection to individual civil liberty that the world has ever seen. The other great states of the world have nearly the same fundamental restrictions on government, but they are not given a constitutional guaranty except in the German Empire.

(b) Political Liberty. — Practically all persons within the state enjoy civil liberty. Even aliens are protected in large measure; but public or political expediency has restricted political liberty to a smaller number of persons. In the beginnings of statehood in the Old World, the individual counted for little. Indeed, he was ruthlessly crushed by the church and the state. In those times there was little self-government and autonomy, and no representation. Political power was imposed from above and did not originate with the governed. During the rise of the absolute monarchs in Europe the rights of the people were still neglected; but the great political revolutions of the seventeenth and eighteenth centuries established representation and popular participation in political affairs. Distinct interests had their representatives; the right of petition was developed into a legislative power; the courts were brought under popular control; legislative bodies could be dissolved and an appeal made to the electorate; frequent elections were established; representatives were given legal instruction; there was the separation of the departments of government, each acting as a check upon

the other; there was a sphere of constitutional limitations and safeguards; finally came minority representation, direct popular legislation through the initiative and referendum, and popular participation in judicial affairs through jury service.

These devices have tended to harmonize authority and personal liberty. Democracy is the practice that is called political liberty. It is not as extensive as civil liberty. Only the capable should participate in governmental affairs; but all should enjoy civil liberty. Political liberty, then, means popular participation in political affairs, and civil liberty means protection against the government and other individuals.

2. Protection of Personal Liberty

Personal liberty finds its protection not by individuals acting according to their own unrestrained wills, but in the exercise of sovereign powers of the government. Here is found the only genuine protection for the greatest liberty of all.

Public law creates immunities against the government in favor of the individual, while the private law creates rights as against other individuals. Thus the individual is protected against the government and other individuals. The private law of most states is practically the same; but the public law differs widely, and this is important from the viewpoint of personal liberty. The protection the individual has against the government turns very largely upon the constitution and its amendment.

In the United States of America a large sphere

of personal liberty is marked out in the constitution and protected by the courts against the legislative and executive branches of the government. The constitution may be amended to protect personal liberty. In Germany a smaller sphere of individual liberty is marked out in the constitution and there are no such judicial or amending safeguards as are found in the United States.

In France and England individual liberty is marked out not in the constitution but in statutes. In England these are safeguarded by the courts against executive encroachment, while in France there is not even this protection. In neither England nor France is there any protection against the legislative department; so it is seen that personal liberty is constitutional in the United States and Germany, and statutory — which means that it can be legally changed at any time by the legislative branch of the government — in England and France. In actual practice the individual has a large personal liberty in each of these four states.

CHAPTER V

THE PHYSICAL BASIS OF THE STATE

TERRITORY and people are the constituent physical elements of the state. A wandering gypsy band, early German tribes, or trekking Boers do not constitute a state. A crude political power which was largely personal may have attached to these nomadic groups in former times, but it was only as the groups became more and more definitely organized that they finally established a specific *situs* or abiding-place with the idea of political power localized.

When the word "state" is now mentioned, as, for example, "France," two mental pictures should present themselves — one consisting of the territory and the other of the people. It may be said that instead of two pictures appearing, only one really appears, which is a composite of territory and people, or if there are two pictures they dissolve or blend imperceptibly into each other. Of course, a group of people are not slavishly bound to a territory. There are changes through births and deaths, through emigration and immigration, but there is a continuous element of permanency. The people of a state are like a great river which is constantly moving, steadily changing as far as individual particles or units are concerned, but it remains the same

river at a given point or place. So the two terms, "territory" and "people," are permanent physical elements in the state.

1. The Territory

There are two aspects or relations of territory that should be kept in mind — one, the place relationship which is static, and the other, the causal or environmental relation which is dynamic.

(a) Place Relation. — The people must have a theater or place in which to carry on their activities. Indeed, it is impossible to imagine the people existing and acting without this space or place relation.

The struggle of man throughout historical times has been largely one for territory. Wars have been waged for the purpose of acquiring or protecting territory. The land basis has been present in all human activities, whether these activities have been connected with family, clan, tribe, or state. "The ancient Irish sept, Russian mir, Cherokee hill-town, Highland clan, Bedouin tribes, Helvetian canton, and modern state have always had the two notions — a group of people and a tract of land." This land bond was perhaps slight in early times and restricted the social group to the family. It existed among hunters and fishermen, and developed clans and tribes. It steadily increased among pastoral peoples and became more and more tenacious and localized as agriculture with its accompanying idea of property in land developed, until it reached its culmination in the territorial idea of the state, with private and

public ownership of land and political jurisdiction coterminous with a definite territory.

Political geography very clearly and specifically marks out the territorial boundaries of states. These boundaries may be natural or artificial. The natural boundaries are mountain ranges, large bodies of water, deserts, forests, and rivers, although rivers are not as good boundaries at the present time as they formerly were. The artificial boundaries may be parallels of latitude and longitude, surveyor's lines designated with posts, monuments, etc. If mountain ranges are the boundaries, the main crest of the watershed is generally used. If the boundary is a navigable stream, the main channel is used. If the stream is not navigable, the middle of the stream is used. Boundaries are usually settled by the states immediately concerned or by international commissions. The boundaries of the state are very important, because they mark the limit of a state's jurisdiction, which extends not only over land, but also over rivers, lakes, canals, and, if the state touches the sea, it adds an ocean belt, three miles wide, counting from low-water mark. The Institute of International Law has voted in favor of extending the maritime limit to six miles. Wireless telegraphy and aeronautic transportation are now raising complex questions as to a state's control of the atmosphere above its territory.

For the most part the ownership of land is in the hands of private individuals subject to the state's power, or eminent domain. Some states have held great tracts; for example, the *ager publicus* of

Rome, the crown lands of England, the public domain of Australia and of the United States of America. These lands have usually been held for some great public purpose, and after this has been served they have been parceled out in severalty, the state simply exercising political authority and not ownership.

(b) Causal Relations. — The causal relations that inhere in territory are numerous and complex. When agriculture became established, industry and commerce developed. Permanent settlements emphasized these new accumulations and called for close organizations. It is the steady pressure of population that reveals every possibility of the territory. The following are some of the types of physical forces that must receive man's attention: the size and zonal location of the country; the mountain ranges and their related river systems and drainage basins; if there is a shore line, its length as compared with the superficial area of the country; relation of the country to large bodies of water and navigable streams and the number of good harbors; the soil and its natural growths, both animal and plant; the mineral resources, and that complex thing called climate. All these have a profound influence on man and must be considered if one is trying to tabulate the whole circle of physical influences. When man has given close attention to these physical forces, the land bond increases on the causal side and territory becomes a vital constituent part of the state.

Political science has fixed no limit to the size of

states. They have varied in size from the city-states to the empires of the present. Even now we have at one extreme the small states of Monaco and San Marino, with only a few square miles, and at the other the vast territory of the United States of America, of Great Britain, and of Russia, with their millions of square miles. The Middle Ages saw Europe divided into small states, but the steady tendency of modern times is in the direction of large states. It is the pressure of population and the demand for a proper sphere for activity that brings this about.

The nineteenth century saw the continent of Africa partitioned among the states of Europe. Indeed, this demand for territory has been so insistent that Great Britain, Germany, and Russia have leased territory from China; and the United States of America, from Cuba. The size of a state may influence its form of government. A direct democracy can be most successful in a small territory, but a large state should have the representative or autocratic form of government.

Climate has had a marked effect on states. The conditions of moisture, heat, light, the seasons as to relative length and whether subject to great variations, are conditioning factors. The extremes of climate have not produced the great civilizations and leading states. These have developed in temperate climates which had a moderate amount of moisture. Scientific investigations have proved that moral notions in regard to property and life are intimately connected with and profoundly influenced

by climate. Since this is true, the state is correspondingly influenced.

The greatest economic fact of any age is that man has a stomach that must have food, and a body that must be sheltered and clothed. The territory becomes important as furnishing resources for supplying man's natural and acquired wants. The flora, fauna, and minerals produce man's chief means of subsistence.

The Old World had a large supply of indigenous animals capable of domestication, such as the camel, elephant, horse, ass, sheep, ox, and goat. Australia had no indigenous mammals capable of domestication, while the Americas furnished only the reindeer, bison, llama, and alpaca; of these only the last two have been domesticated, and they are small. The domestication of these animals accounts in a measure for the early rise of the pastoral and agricultural life in Asia and its backwardness in Australia and the Americas. Fish as a food supply, and fur-bearing animals as a clothing supply, have played important rôles. The New World was rather fortunate in its supply of indigenous plants capable of being used as food — such as maize, tubers, pumpkins, beans, and rice. The forest products have been used as means of shelter and the foundation of many industries.

What is under the soil has played a relatively important rôle compared with the surface of the soil. The mineral deposits have been used to designate man's early stages of culture. We speak of the "Stone Age," the "Bronze Age," the "Iron

Age," etc. Building stone, tin, coal, salt, iron, gold, silver, lead, copper, and the presence of oil or gas have all been conditioning forces, tremendously important but exceedingly difficult to analyze and estimate.

Numerous writers have made much of topography in state-making. They point out that the chief reason Greece never developed beyond a city-state was the geographical isolation of the units, which tended toward political disunion. The states were separated by mountain ranges and arms of the sea. These centrifugal forces prevented political union. These same writers point out how highland sections have developed a set of particularistic interests distinct from those found in lowland or tidewater sections. This is because of different natural resources with their accompanying economic demands. A state that has a wide extent from north to south will develop distinct sets of economic interests, each undertaking to dominate the state in its own favor. These writers emphasize how the institutions of Switzerland and Holland have been based on or influenced by physical environment.

Burgess makes much of what he calls geographic units as proper homes for separate states. By a geographical unit is meant a tract of territory which has a certain homogeneity or isolation, which is set off by natural boundaries such as mountains, large bodies of water, impenetrable forests, great deserts, and distinct climatic changes. The natural boundaries were very important as means of military

defense when states were developed. Using the idea of geographical units, Burgess points out that there are nine fairly distinct units in Europe, and that political geography tends to conform to these scientific boundaries, especially if there is ethnic unity. These nine units in Europe are: (1) the Iberian peninsula, the extreme southwestern projection of Europe, containing the states of Spain and Portugal; (2) the British Isles, all under one political power; (3) the Gallic lands north of the Pyrenees and west of the Alps, but with a defective line from the city of Liége to the North Sea, comprising the state of France, all of Belgium, and part of Switzerland; (4) the Italian peninsula, containing the state of Italy; (5) the Balkan peninsula, containing Turkey in Europe, and Greece; (6) the Scandinavian peninsula, containing the states of Norway and Sweden; (7) the central district, with defective boundaries on the northeast and northwest and containing the states of Denmark, Holland, Luxembourg, part of Switzerland, and the whole of the German Empire; (8) the Danubian basin, which contains the state of Austria-Hungary and several small principalities; (9) European Russia, which contains one political power.

The study of a relief map will reveal how political boundaries have been made to conform rather closely to topography; that the most scientific boundary lines are mountains and large bodies of water. A river is not a good boundary of a state because its drainage basin is a physical unit and tends to become an economic, cultural, and political

unit. A little study of history will show that the topography of Europe is so diversified that it would be difficult to unite Europe into one state. It has been tried — by Caesar, the emperors of the Holy Roman Empire, Charlemagne, and Napoleon. There is much food for historical and political reflection in considering the part that the Alps and the English Channel have played in history and state-making in Europe. The state boundaries where the lines of physical geography are indistinct are the places where the great battlefields of Europe are located. They are the exposed frontiers of the German Empire and the lower course of the Danube.

Using the same guiding principles, six fairly distinct geographical units are distinguishable in North America: (1) the Mexican table-lands; (2) the Atlantic plain; (3) the south Pacific highland; (4) the north Pacific highland; (5) the Mississippi basin, and (6) the Hudson Bay district. The United States of Mexico occupies the first. The United States of America, roughly speaking, occupies the second, third, and fifth, and the Dominion of Canada, roughly speaking, occupies the fourth and sixth. In North America, topography is not so distinct as in Europe. Besides, man has been able to overcome physical boundaries more easily than when states were developing in Europe.

2. The People

(a) The Social and Political State. — The definition of the state emphasized the people, organized

for a political purpose, as being a constituent element of the state. If all the other elements of the state are present and there are no people, no state exists. In a general sense all people within the boundaries of the state and subject to the jurisdiction of the government constitute what may be called, for the want of a better term, the social state as distinguished from the political state. "We, the people," of the constitutions are the persons that have political power and are the political state. It is the political state that has final authority, that makes and modifies the constitution and forms the machinery of government and enacts the laws. The political state constitutes only about one-fifth of the social state.

(b) Nationality.—Nation and state are sometimes used as synonymous terms, but this is incorrect. "State" is a political term, while "nation" comes from the Latin *nosci,* which means "to be born," and is therefore a word taken from the science of ethnology. Burgess says a nation is a population having a common language and literature, a common tradition and history, common customs, and a common consciousness of rights and wrongs, inhabiting a territory of a geographical unity. Other writers add the national element of common descent and a common religion, and do not emphasize geographical unity so strongly as Burgess does. Common understanding and the facility for cooperation are undoubtedly the best foundations for a nation. Kinship and language constitute this basis. Religion formerly was a strong factor, as illustrated

in the Jew's theocracy and the attitude of the Puritan colonies in New England; but this has changed with the growth of religious toleration.

The nation and the state are rarely, if ever, coterminous or identical. The state may be larger than the nation, and vice versa. The British state includes one nation and several nationalities; Austria includes one nation and several nationalities; the Russian Empire and the United States of America include many nationalities, while the state of Switzerland includes three races, namely, Germans, Italians, and French, in about equal numbers. Conversely, the state may fall short of the limits of the nation. The German nation is larger than the German Empire; the Slav nation than Russia; the French nation than France; the Italian nation than Italy; the Dutch nation than Holland, and the Spanish nation than Spain.

The statement is often made that "blood is thicker than water." History seems to verify this statement. The patriarchal state was founded on kinship, and in Greece and early Rome kinship was considered the basis of the political community. Of course, the notion of nationality suffered a decline when Rome by absorption and conquest passed from a city-state based on a common race to a country-wide state with universal political power, which had an attenuated existence in the Holy Roman Empire. Nationality was still submerged during the period of feudalism, but reappeared at full flood-tide following the great political upheavals called the American and French revolutions. It received a

temporary setback at the Congress of Vienna in 1815, which completely ignored the principle of nationality when Europe was reorganized at the close of the Napoleonic régime.

The principle of nationality has been the dynamic force in reestablishing Greece, Germany, and Italy, and in severing an unwise political union forced upon Holland and Belgium by the Congress of Vienna. It is back of the political demands of the Poles, the Bohemians, the Finns, the Irish, and the Czechs. It is back of the Pan-German and Pan-Slav parties in Europe. Indeed, the German emperor in a speech before the German Reichstag, in attempting to justify his own course in the present European War of 1914, said: "The imperial Russian government gave way to an insatiable nationalism." In other words, the Slavs of Russia were coming to the assistance of their brother Slavs in Servia. To put this another way, the present European War, in its origin and aside from alliances based on mere expediency, is national at bottom. It is Pan-Slavism against Pan-Germanism. Each of the large states is adopting the policy of nationalizing its people for the purpose of securing ethnical homogeneity and, therefore, political efficiency. Witness the work of Russia in Finland and Poland; Germany in Poland and Alsace-Lorraine; England in South Africa; and the United States in Porto Rico and the Philippines. The conclusion is inevitable that nationalism has been a strong factor in state-making. It has had its ebb and flow, but there has always been a steady national undercurrent. Now that the whole

world is a kind of economic, industrial, and commercial neighborhood, the principle of nationality may have served its purpose in organizing strong, well-equipped states, and may merge into internationality with its world-wide ramifications.

(c) Political Psychology. — The spirit of nationality tends to express itself in political unity and organization. This political trend has manifested itself differently among the different nations and produced widely varying political products.

The different nations of Asia made no great political contributions. Their chief contribution has been religious; for example, Judaism, Mohammedanism, Buddhism, and Christianity. The modern Chinese and Japanese, however, are showing recent signs of efficient political activity, but their inspiration has come from the West.

The Greeks and the Slavs are similar, and have shown political genius only in developing the small community, such as the village and the city-state. They have developed an intense political life in the community; but they are peculiarly weak in protecting individual rights, in securing intercommunity affairs, and in protecting the community from external interference. Both Greeks and Slavs have been organized from without — the Greeks by the Macedonians, Romans, Turks, and Teutons; and the Slavs by the Teutons. Closely connected with the political genius of the Greeks and the Slavs is that of the Celt. While the former developed small units to a fair degree of political perfection, the peculiar political trait of the Celt is a passionate

attachment to some personal leader or chief. This has rested on a large number of petty military states. The personal element has been the dominating principle.

The Roman nation has shown great political genius. To conquest it added incorporation, organization, and the legal formulation of rights on a scientific, logical basis. World-empire was not only her dream, but also her political realization. While the Roman nation made great political contributions to the world's stock, it sacrificed the liberty of the individual, failed to popularize government, suppressed local autonomy, and obliterated ethnical or national differences.

Where the Romans were weak their Teutonic conquerors were strong. The Teutons have added to conquest and incorporation the political device called representation, which gives all the advantages of Roman universal empire and local autonomy. They have solved the relation of authority and personal liberty. They have respected the principle of nationality in state-making. If the principle of "dominant nations" is admitted, the Teutonic nation has proved its right to furnish the political genius and organization for the government of the world.

Part II: The Government

CHAPTER VI

NUMBER OF PERSONS EXERCISING POLITICAL POWER

THE state expresses and enforces its will by means of an agent called the government. A union of individuals does not constitute a state without the unifying force of a government. The state may limit the government in the constitution, but it cannot act except by means of this governmental representative. The state and the government, then, are correlative terms; the one does not exist apart from the other.

States as states cannot be readily classified, for the reason that all states have the same essential elements which have been described above. The government is the outward manifestation of the state, and is therefore the best means for classifying states.

There is a great variety in governments, but the different characteristics yield to systematic classification. The following scheme is perhaps as useful as any: (1) number of persons exercising political power; (2) nature of the different forms; (3) organizations or agencies through which political power is exercised. These three divisions will be taken up in order.

On the basis of the number of persons exercising

political power, governments are classified as (1) monarchies, (2) aristocracies, (3) democracies.

1. Monarchy

A government is a monarchy when the supreme political authority is vested in one person, although there are numerous subordinates and the legislature rests upon a popular basis. Monarchy is undoubtedly an early form of government. Since the early state was closely related to force, it follows that power and authority were the first attributes of the government. The savage mind easily grasped the crude and simple idea of a more or less absolute ruler, and hence the conception of monarchy naturally arose from the necessity of defense or aggression, gathering to itself the essential attributes of militarism.

The source of the royal tenure, at first elective, in time became hereditary, sometimes a combination of the two. The early Roman kings and the Emperor of the Holy Roman Empire were elective.

While the elective principle either by plebiscite or by parliamentary sanction was generally used, nevertheless the election came to be restricted to one family. The principle of hereditary succession pushed the elective principle into the background. Now the monarchies of the Old World are all hereditary. Election has become a mere perfunctory form except when a new dynasty is being established or a great emergency exists.

From another point of view monarchy is abso-

lute or limited. In the first case the monarch has full power and is both state and government; in the second case the monarch is limited by a constitution which has been evolved or adopted by some assembly or promulgated by the monarch. Practically all existing monarchies are constitutional or limited, although some of the more recently promulgated constitutions are but a thin veil for the old forms of absolutism in such countries as Russia, Persia, and Turkey.

Since monarchy until the latter part of the eighteenth century was so universal, an examination of its merits and demerits is appropriate. The early military monarchies depended upon the personal qualities of the leader or chieftain, but at the close of each reign there might be turmoil, disruption, uncertainty, and perhaps a marked change in policy with the advent of a new monarch. This lack of continuity and fixity in policy called for vesting the succession by a definite method, and the hereditary plan came into existence. The adoption of the hereditary principle developed the idea of personal and private ownership in office the same as in property. Henry VIII practically devised the crown of England by will. Hereditary succession in government is a curious political anomaly. The qualities that insure good government are not always transferable from parent to child. History abounds in numerous examples of feeble-minded and incompetent rulers that inherited thrones through the operation of the hereditary principle. The accident of birth has little to commend it as a sound political

principle. Theoretically, the elective principle is the true ideal.

Absolute monarchy has not been without service in the world's history. The early stages of civilization required a strong leader, because the people had only a vague political consciousness and could not participate wisely in public affairs. The habit of obedience needed to be taught to savage people. Benevolent despots established absolute monarchies at the beginning of modern times by slowly gaining the ascendency over the contending claims of free cities, feudalism, and the church, and finally paved the way for the modern constitutional state. Again, government must have sufficient force to protect the state. Therefore, so long as war is utilized among states, an absolute monarchy can guard against insurrection and foreign aggression more promptly and effectually than a limited monarchy, because unity in the executive gives stability and affords promptness in governmental activity.

Absolute monarchy in the minds of most people has served its purpose in the historic development of the state chiefly because it has developed bad tendencies. Among these tendencies may be mentioned personal favoritism to classes and individuals, bad and unequal administration of the government, dynastic ambition, the inordinate worship of the military in the state, and exaltation of the government at the expense of the individual.

Monarchy in recent times has tended to become constitutional, the monarch agreeing in the constitution to certain limitations on his power. Accord-

ing to this practice, the wearer of the crown is merely an organ of the government. This is the idea of a representative government, from which limited monarchy differs chiefly in utilizing the hereditary principle. Frequently the constitutional monarch is simply the titular government, the real power being exercised by a cabinet responsible to the legislature.

2. Aristocracy

Aristocracy as a form of government means that a small number of persons exercise political power. In this sense all governments are aristocracies to a certain degree, because a relatively small number of persons in any state, either ancient or modern, is engaged in government.

Society is composed of groups with distinct aims or purposes; hence an explanation of aristocracy, especially as a social principle, is necessary. Society, when not tempered by a sense of justice, naturally organizes into castes resting to a considerable extent upon human, selfish propensities. A small body of persons, when held together by a common bond, is able to dominate. A warlike nation may conquer another nation, hold it in subjection, and thus form an aristocratic class, with the warrior representing the element of force. A religious group may gain an ascendency and become a caste under priestly domination. Another aristocratic class may develop out of feudalism. The word *feudum* means land, and came to represent the stability of a society based on land. This landed aristocracy has been

enlarged to include all large property owners, whether their wealth consists of land or personal property. The general term now is "the wealthy," whatever the source of the wealth. A family may display unusual qualities of leadership and gain control which becomes permanent and establishes an aristocratic class based on heredity. The elder members of a society may assert leadership because of age, and develop a class of seniors or elder statesmen based on seniority. Finally, a high grade of mental ability may be cultivated to the extent that an educated class assumes leadership and forms a distinct aristocratic class. These classes, then—(1) the soldiers; (2) the churchmen; (3) the wealthy; (4) the family; (5) the seniors or elder statesmen; and (6) the educated—are the fruitful sources of aristocracies in society. In many cases the aristocracy has consisted of combinations of these various classes which naturally gravitate into and assume political power. They may act, react, and interact in a beneficial manner for the good of society. These divergencies are but natural, and so long as they respect the equality of human rights, which are fundamental and common to all humanity, aristocratic classes have won great victories for civilization.

Aristocracy has developed certain weaknesses. Who can judge with infallible accuracy who is fittest to rule? In answering this question many sham aristocracies have developed. Aristotle pointed out that aristocracy deteriorated into a corrupt form which he called oligarchy. It has been charged

that aristocracy has exercised political power in its own interest and made too large a use of heredity and wealth, together with military and religious domination; finally, that it is arrogant, non-progressive, and reactionary.

The term "political aristocracy" means government by the best. It emphasizes the idea that some are better qualified to govern than others; that experience and professional training should be utilized; that some are well born, and possess political talent which should be recognized. It stresses authority, custom, and tradition. It is conservative and opposes innovations. Historically, it has formed a balance wheel, checking absolutism in monarchy and tempering the passions of democracy. If political power should be exercised by specialists or the professionally trained, then aristocracy is a salutary principle both in society and in government.

3. Democracy

Democracy means a government by a comparatively large number of people. It may be a direct or pure democracy, the voters acting immediately upon the affairs of state, or it may be representative, the voters acting mediately or indirectly. Direct democracy existed in the early city-states, but the conditions that called pure democracy into existence have largely ceased to exist. Some use is still made of it in small administrative units like school districts and townships. Four small cantons in Switzerland govern by means of a pure democracy.

Indirect or mediate democracy is representative or republican government. The conception of a republic has changed much in the course of time from Athens and Rome down to the present. In the *Federalist,* Number XXXIX, the following are emphasized as the constituent elements of a republic: (1) a scheme of representation with political power delegated to a small number of elected or appointed officers whose power comes from the people and whose term of office is limited; (2) adaptability to large populations and wide extent of territory; (3) a reasonably wide suffrage. Lincoln in describing a representative government spoke of it as "government of the people, by the people, and for the people." This is the popular definition at the present time.

Large numbers of people cannot act directly in any efficient way, therefore the representative principle is necessary. The exercise of the elective franchise by which representatives are chosen is not an inherent right, but a privilege, and exists as a means to an end. If the people are to rule themselves, they must be ruled by the best ability, and not by ignorance and vice. The suffrage should be as extensive as possible and still secure the safety of the state. The right to hold office is not as wide or general as the privilege of voting.

Democracy has developed certain weaknesses. Among these may be mentioned the injudicious selection of officers, the development of political bosses, intense party feeling, lack of stability, demand for temporary measures, emphasis on quan-

tity rather than quality, short tenure of office, small use of the professional official service, and, finally, diffusion of political responsibility among individuals until it has become wellnigh infinitesimal.

Its strength may be characterized as follows: the security of human rights with emphasis on people, which policy tends to develop sympathy between the government and those governed; the spirit of self-reliance is developed and obedience rests upon willing consent and not upon force. In a word, it is a training school for citizens or an agency of political education as well as a form of government.

Democracy will perhaps be most successful (1) where there is a written constitution difficult to amend, which safeguards property and contract; (2) where there is the largest equality of opportunity; (3) where there is publicly supported education which stresses vocational and civic subjects.

The classification of governments according to the number of persons exercising the political power is as old as Herodotus and Pindar, but is usually associated with the name of Aristotle. The three types — monarchy, aristocracy, and democracy — are relative and not absolute, because most governments contain mixed elements. At the present time monarchies and democracies dominate. Monarchy has aristocratic and democratic elements, while democracy tends to develop many aristocratic features; but the steady tendency in practically all countries is toward the democratic type.

CHAPTER VII

NATURE OF GOVERNMENTAL FORMS

RECENT writers are not satisfied with the classification of governments made by Aristotle on the basis of the number of persons that exercise the supreme political power, and it must be confessed that at best it is only a partial classification for modern governments. Other leading characteristics have appeared in recent times that lie wholly outside of Aristotle's classification. Burgess suggests the following additions: (1) relation of the government to the state; (2) formation and termination of the official relation; (3) relation of the executive to the legislature; (4) distribution of political power. These will be treated in order.

1. Relation of the Government to the State

When the political acts of the state are exercised by the same person or persons that possess the original sovereign power, the state and the government are said to be identical or immediate and necessarily despotic. When the state and the government are one, there can be no limitation on the government. This form exists in an absolute monarchy or in a pure democracy. The tendency is to limit monarchy, while the pure democracy can be exercised over small areas of territory where family

and neighborhood ties act as wholesome restraints on tyrannical tendencies.

Almost everywhere now the government is regarded as the agent or representative of the sovereign. The idea is one of principal and agent. The state in this case grants to the government something less than the whole political power and makes it responsible, as in the case of agent and principal. The powers of the government may be enumerated in a constitution and a reserved sphere of individual liberty marked out. In this case we have mediate governments; that is, limited monarchies and representative democracies or republics.

2. Formation and Termination of the Official Relation

There are several methods of forming the official relation, but the two leading ones are the hereditary and the elective.

The hereditary method is that form in which the political power is conferred upon a person because he stands in a certain family relation to his predecessors; that is, the authority to exercise political power rests upon inheritance. The several forms of family relationship determining succession at present are: (1) *ancienneté,* the oldest member of the family of the deceased; (2) *ancienneté* in the male line, the oldest male member of the family of the deceased; (3) *primogeniture,* the oldest immediate descendant of the deceased, or, in the case of no issue, the oldest immediate

descendant of the nearest ancestor of the deceased; (4) *primogeniture* in the male line, the oldest immediate male descendant of the deceased, or in case of no male issue, the oldest immediate descendant of the nearest male ancestor of the deceased; (5) appointment in the royal family, the ruler being allowed to appoint the member of his or her family who shall succeed. Of all these methods of political inheritance, primogeniture in the male line has been most widely used in recent times and perhaps has been most successful. The hereditary method is fast losing ground.

The elective method of forming the official relation rests upon the choice of the electorate, or those having the elective franchise. This privilege may be exercised directly, which is called election in the first degree, or it may be exercised indirectly, or election in the second degree. The second degree election is assumed to insure a selective process which will yield better results than the direct election. But the results have been disappointing, as the second degree election is frequently a perfunctory form. The electorate may rest on a restricted or a universal basis, but the constant tendency is to widen the electoral base.

In addition to the hereditary and elective methods of forming the official relation, some other methods are worthy of mention. In countries where the hereditary principle has been discredited, there has been substituted another method for the purpose of meeting emergencies. In this case a person is elected to one office with duties merely nominal,

and stands ready to assume another and higher office in case of an emergency — such as death or disability of the incumbent of the higher office. Such offices are the vice-presidency in the United States and the lieutenant-governorships in the American states. The method has not been highly successful, but is regarded as superior to the hereditary method in meeting official emergencies.

The appointive method is largely used in all countries for subordinate positions, especially where expert services are required. In many cases these appointments must rest upon the results of a competitive examination. In the United States there is a considerable demand for lessening the number of elective officers through what is known as the short-ballot method, and increasing the number of appointed officers. This would centralize political power and fix the responsibility in a limited number of elected officers.

The tenure of office in states using the hereditary method is for life, while in states using the elective method it is usually for a limited term, subject to various methods of removal, such as conviction on impeachment, recall, joint address of the two houses of the legislature, or vote of lack of confidence if the officer belongs to the administrative branch. If the officer belongs to the legislative branch there may be expulsion by the house to which he belongs, or there may be various forms of recall. In the case of appointed officials the appointing power under various restraints can remove. In demo-

cratic countries the tendency is toward short tenure and rotation in office.

3. Relation of the Executive to the Legislature

The relation of the executive to the legislature has become one of the leading characteristics of government. From this criterion governments are classified as presidential and cabinet.

Presidential government, sometimes called non-parliamentary, is that form in which the executive is constitutionally independent of legislative control as regards the formation and tenure of the official relation, except when the usual electoral machinery fails or when the executive is guilty of high crimes and misdemeanors and is removable on impeachment and conviction. The presidential system rests upon the principle of executive independence in the formation and tenure of the official relation, with sufficient constitutional power to prevent legislative encroachment upon executive power. Under this form of government there is no distinction between the nominal or titular executive and the real executive. There is a chief executive and he appoints ministers to perform administrative duties, but these ministers are not members of the legislative body. In most cases they do not have entrée to either chamber. They do not assume responsibility for the acts of the executive, prepare, introduce, or defend bills before the legislature. They are not subject to interpellation and votes of censure. They are appointed and controlled by the executive and are executive ministers and not parliamentary

leaders. Frequently they do not belong to the same political party that controls the legislative branch of the government. The presidential system prevails in the United States, Austria, several of the minor European states, and in a modified form in Germany.

In this system there is opportunity for friction and even deadlocks between the executive and the legislature, but the influence of the political party tends to harmonize the two branches of the government, especially if the chief executive belongs to the same political party as controls the legislature. The system concentrates power in one person, which tends to produce caution and deliberation; but when a course of action is decided upon, there can be and usually is an energetic and powerful administration of the law. This is especially important in states where there are great varieties of interests, where the federal form of government prevails, or when foreign affairs are the chief interest and vigorous action is demanded in time of war.

The cabinet government, sometimes called ministerial, parliamentary, or responsible, is a system in which the real executive is directly and legally responsible to the popular branch of the legislature and indirectly or politically responsible to the electorate, usually through the political party, while the nominal executive is irresponsible. It is a convenient form where the state has a limited, hereditary monarchy as is the case in England, Belgium, the Netherlands, and Italy; but the nominal executive may be an elected president, as is the case

in France and a few of the Latin-American republics.

The cabinet combines in itself both administrative and legislative powers, as it is a committee of the legislature which insures expert initiative in legislation. The cabinet members usually belong to the legislature, but if they do not, they have the privilege of the floor and participate in the deliberations of the legislature. This dual relation is usually presupposed. The members of the cabinet are heads of great administrative departments as well as responsible party leaders of parliament. This system originated in England and grew out of historic custom. It then spread to France, Belgium, Holland, Italy, Sweden, Norway, Denmark, Roumania, the British self-governing colonies, and a few Latin-American states.

The best results of the system have been achieved in England. Here, so long as the cabinet enjoys the confidence of the House of Commons, it remains in power, but when the House votes a lack of confidence the cabinet must immediately resign or request the dissolution of the House and make an appeal to the electorate. Then, if again voted down, the cabinet must resign at once. The King appoints a new cabinet which usually comes wholly from the ranks of the party having the majority. There is rarely a coalition cabinet in England. The system in Belgium is similar to that in England, except the crown enjoys a larger power than in England. The cabinet system in France and Italy is much alike on account of the numerous political

parties and factional groups which make coalition ministries each with a short political life a practical necessity. France has, on an average, about two cabinets each year. The coalition cabinet lacks coherence and stability.

The cabinet system of government secures harmony between the executive and the legislature because it makes the legislature omnipotent and produces a weak executive. The nominal executive is a legal fiction and the real executive is subordinated to the legislature. This system reduces one branch of the legislature to a practical nullity and sacrifices the independence of the executive, and in states where there are numerous political parties the result is an unstable political equilibrium.

CHAPTER VIII

NATURE OF GOVERNMENTAL FORMS — DISTRIBUTION OF POLITICAL POWER, UNITARY AND DUAL GOVERNMENT

ON the basis of the distribution of political power, governments are (1) unitary; (2) dual; (3) local; (4) colonial. These will be treated in order.

1. Unitary

The unitary, simple, or centralized form of government is one which has a single supreme will from which radiates all governmental power. The state may be governed wholly from the central organization, or the central organization, on account of historical or local conditions, may subdivide the state into administrative districts, such as departments, parishes, counties, communes, etc. But these local units have no real local autonomy as against the power of the central organization. All powers exercised by these local units are delegated by the central organization, the local units being the mere creatures of the supreme central power. In such a system the local units may be composed of areas which were once independent political powers, such as Scotland and Ireland; or they may be counties such as are common in England and the Amer-

ican states; or departments and communes, as in France; or provinces, as in Italy and Belgium; but in all these the local units are agents of the central organization and may have their powers modified or withdrawn at any time. The British Empire, most of Europe, and the individual commonwealths of the United States are organized on the unitary or centralized basis.

The unitary form of government is best adapted to a country with strong, antagonistic internal elements; or where the people are not politically strong enough to use a full measure of local self-government and still need considerable supervision by a strong central organization.

2. Dual

For the purpose of securing protection or mutual advantage, various grades of unions have been formed among states, ranging all the way from loose alliances to a federation.

(a) Administrative Unions. — One phase of this political cooperative activity is well illustrated by international administrative unions such as the International Postal Union, 1874; International Telegraph Union, 1865; International Metric Union, 1875; International Union of Railway Freight Transit, 1893; International Institute of Agriculture at Rome, 1905.

In addition to these, various working alliances have been formed, such as the Triple Alliance between Germany, Austria, and Italy, the Triple Entente between England, France, and Russia, and

the cooperative understanding between the United States, Argentina, Brazil, and Chile.

(b) Monarchial Unions. — There are various forms of monarchial unions such as (1) the *personal union,* where there is a union of two states under a common ruler, each state being wholly independent except the bond existing in the crown. Some examples of the personal union are: England and Hanover, 1714-1837; Holland and Luxembourg, 1816-1890; Schleswig-Holstein and Denmark, 1776-1863. Such unions are temporary, the common monarch being regarded as possessing a dual political personality, one for each government of the union. (2) Another form is called *realunion,* where two states unite not only under a common ruler but have the administration of common affairs carried on under a constitutional arrangement, the two states being merged for external or international purposes but still retaining distinct internal institutions. Good examples of the *realunion* are Norway and Sweden until 1905; and Austria-Hungary at the present time. Recent writers pay little attention to such unions as have just been described and devote their attention to the confederation and the federation as forms of political unions.

(c) Confederation. — The confederation (*Staatenbund*) is a league or band of states the individual members of which retain their full sovereignty and independence. There are as many sovereignties and local governments as there are members of the union. There is one central government composed of semi-diplomatic agents of the different states

giving expression to the joint wills of the constituent members. The confederation rests upon agreement and not constitutional law; therefore only a partial, juristic personality is formed and this for international purposes.

There are neither executive nor judicial organs, only a legislative, or rather a semi-diplomatic, body which passes resolutions. The component states of the union are equal, and instruct their delegates and recall them. The central government has no means of enforcing obedience upon individuals, and no real power to raise revenue. It must act through the local governments. The component members of the union are free to withdraw at will. The confederate form of government is transitory, as it usually develops into either the unitary or the federal type.

There are numerous examples of confederations in history. Among these may be mentioned the various leagues in Greece and the early Italian cities; the Rhenish Confederation, 1234-1350; the Hanseatic League, 1367-1669; the two Swiss confederations, 1291-1798 and 1803-1848; the United Netherlands, 1576-1746; the United States of America, 1781-1789, and the German Confederation, 1815-1866.

(d) Federation. — The federation (*Bundestaat,* or banded state) exists where there are a number of local political units with large autonomous powers and a common central government for the administration of matters of general concern, each government, central and local, having real

powers that it can exercise and defend against the other.

Some of the early confederations approached the federal type, such as the Achaean League of Greece, and several of the other confederations which later merged into the federal form, such as the United States of America, 1789; Germany, 1871; Switzerland, 1874. Other federal unions are: Mexico, 1857; Dominion of Canada, 1867; Argentina, 1860; Brazil, 1891; Commonwealth of Australia, 1900, and Venezuela, 1903. Some of these, especially the United States and Germany, have retained vestiges of confederatism, while others, such as Canada, verge toward the unitary type of government. At the close of the Middle Ages and the failure of the Holy Roman Empire to establish real political power, there began a process of political amalgamation which resulted in the gradual elimination of small states. The large states have been built up in several ways: (1) by conquest or expansion, such as Russia, France, and the British Empire; (2) by peaceful and voluntary action when the spirit of nationality or political necessity asserted itself, such as the union of England and Scotland, 1707, Great Britain and Ireland, 1800, and Aragon, Castile, and Granada to form the modern kingdom of Spain, 1492, all resulting in states with a unitary form of government. But a third method has resulted in the formation of large states through the principle of voluntary federal union, which has come about in two ways: (1) where a state with a unitary form of government, for the sake of har-

monizing centralization and localism, deliberately adopted federalism, such as Mexico in 1857 and Brazil in 1891; or (2) where several states or colonial dependencies practically autonomous, in order to form a union, adopted the federal form, such as the United States, the German Empire, Switzerland, Canada, and Australia.

There are some necessary conditions for the formation and maintenance of a successful federation: (1) There must be a body of political communities such as states, provinces, cantons, or dependencies with sufficient similarity of race, history, and homogeneity to form a strong demand for nationality and political union; (2) there must be a strong feeling of local unity which insists upon a division of political power so as to preserve local individuality; (3) there may be the existence of a strong unitary government where the people wish to secure the advantages of local initiative without destroying external unity.

Whatever the method of formation, whether by the coherence of existing political units or the division of a unitary government into a central and several autonomous local units, the following conditions should obtain: (1) a written constitution defining the relations that exist between the central and local governments, marking out the respective spheres of each so that neither government alone has the power of amending the organic act; (2) a common tribunal with the power to interpret this fundamental law and thus prevent either government from encroaching upon the sphere of the other

as laid down in the constitution or fundamental organic act.

Political scientists differ as to the essential features of a federal union. Some claim that it bears a close resemblance to a league of states or a confederation and call the local units "states" because most of them were states before the union and still retain many of the attributes of a state after the merger, lacking complete independence but having the power to command and enforce obedience. In opposition to this view, it should be stated that the local units do not have the original power to command and enforce obedience. They cannot change their relation to each other or to the central government. In foreign affairs they usually have little or no power, while in local matters they are not sovereign but locally autonomous. Still others maintain that the central government and the various local governments of the federal union exercise each for itself a part of the total sovereignty. In other words, they maintain that sovereignty is divided. This view cannot be maintained, as sovereignty, as discussed above, is indivisible. The correct view seems to be that in most cases the component parts of the federal union were originally sovereign but this was lost in the re-creating act; that the local units are the possessors of a new set of powers under the act of union that created the federal union; in short, that sovereignty is not divided but inheres in the state that exists back of the federal government which includes both central and local units. The central government exists for

the exercise of certain powers and the local governments exist for the exercise of still other powers.

The constitution or organic act by which the federal union is formed, distributes the powers between the central and the local governments. In the United States and the majority of the other federations the state delegates to the central government a certain number of enumerated powers, all other proper governmental powers being reserved to the local governments; but in Canada the central government exercises both delegated and reserved powers and the local or provincial governments exercise delegated powers, only. While each government is supposed to exercise the powers assigned to it in the constitution by the state, in some of the federations the central government exercises a kind of overlordship over the local units. For example, the constitution of the United States says that the supreme law of the land shall consist of the constitution, statutes, and treaties of the United States, anything in the state constitutions to the contrary notwithstanding. It also has the power to see that the local units have a republican form of government. The central government in Canada and Venezuela may veto the acts of the local legislatures. In Switzerland and Germany the central governments may compel the local governments to perform certain acts, especially those that pertain to the welfare of the union as a whole.

The federations differ as to the assignment of certain powers to the respective sets of governments. Leacock sets forth a series of possible

powers for the central government of a federal union somewhat as follows: (1) those absolutely essential, such as military and naval power, foreign affairs, and the raising of money; (2) those where uniformity is desirable, such as power over coinage, patents, copyrights, postal affairs; (3) those where uniformity is not absolutely essential but highly desirable, such as the main lines of transportation, including railroads and canals, also telegraphs and banking; (4) a doubtful sphere including marriage and divorce and education. Other governmental powers are mainly local in nature.

The present federations differ widely in the distribution of powers. The constitution of the United States, adopted in 1789, granted to the central government a small number of powers absolutely essential, all other powers being reserved to the states. These powers were grudgingly granted to the central government because of state jealousy and localism. This was before the days of rapid transportation, the telegraph, the factory system with its large-scale production which has brought about economic integration. It was also at a time when particularism was strong; but the Civil War settled the quarrel as to the nature of the federal union and magnified the powers of the central government. Most of the other great federations have been formed since the American Civil War, and profited by the experience of the United States. The dominion parliament of Canada, in addition to the powers granted to the congress of the United States, has control over criminal law, marriage and

divorce, interest, all forms of taxation, banking, and the general residual powers of government not assigned exclusively to the provincial legislatures. This assignment was made in the British North American Act of 1867, which serves as a constitution for the Dominion of Canada. In Germany, the central parliament has vastly greater powers than the congress of the United States. It controls insurance, pensions, trades, the press, railroads (except in Bavaria), practice of medicine, banking, criminal, civil, and commercial law, and judicial procedure. There are certain limitations in the distribution in Germany. The local governments have a small power over foreign affairs and a few of them retain the right of coinage. In this connection it should be said that several powers assigned to the central government are not exclusive. They may be exercised by the local units until the central government sees fit to act, thus providing a salutary principle of concurrent jurisdiction. In Switzerland, the constitution, in addition to those powers exercised by the congress of the United States, grants to the central government power over religious bodies, manufacture and sale of alcoholic liquors, health, game laws, railroads, labor, insurance, and the whole range of commercial law. The central government may compel the cantons to establish secular education, but it has no power to levy direct taxes. The Commonwealth of Australia was established as a federation by the British parliament in 1900. The Act grants to the central government power over defense, taxation, postal

affairs, tariffs, interstate commerce, bounties, insurance, marriage and divorce, railroads, invalid and old-age pensions, and many other matters stated in great detail. There is also a large use made of concurrent jurisdiction, only a few powers being declared exclusive in the central government. In case of conflict between the central and local governments the law of the central government supersedes the act of the local government. This principle seems to have been borrowed from Germany.

The constant tendency is to magnify the powers of the central government. In explanation of this the following reasons may be assigned: (1) the tremendous lessons of the American Civil War with the resulting amendments that curbed the power of the local governments, also the latitudinarian construction of the constitution by the supreme court which has fully established the principle of implied powers; (2) the recognition of the fact that we have economic and industrial integration and social solidarity which has softened the demands of local particularism and made it easier to take on a true allegiance to the central government which is nation-wide and seems to harmonize with the facts of modern life; (3) the giving of both delegated and reserved powers to the central government, as in the case of the Dominion of Canada; (4) the comparative ease of amending the constitution in some states which permits a redistribution of the powers to correspond with the necessities of the case, as in Switzerland and

Australia with their periodic and popular revisions; (5) the principle of concurrent jurisdiction between the local and central governments, allowing the local governments to exercise a power until the field is taken over by the central government because of necessity, as in the case of Germany and Australia.

The federal form of government has its sharp critics and strong defenders. The profound changes at work by economic forces have revealed weaknesses in the structure, distribution of power, and internal aspects of federalism. The foreign affairs of the United States have been materially interfered with by the powers exercised by the local governments over the person and property of aliens. This has recently given rise to conflicts in the United States between the central government and localism in California. Internal difficulties have arisen in the United States through a diversity of legislation on such subjects as marriage and divorce, insurance, labor, and transportation, where uniformity of legislation is desirable. It is also pointed out that the federal form of government is expensive, as it provides for double legislation and administration.

Stephen Leacock goes so far in his criticism of federal government as to say:

> In proportion as economic progress results in industrial integration, federal government is bound to give way. It is destined to be superseded by some form of really national and centralized government, occupying at its own discretion whatever part of the total economic and industrial field it may see fit to occupy, untrammeled by the network of a written constitution and the jugglery of judicial interpretation.

The advantages of federal government are numerous and have many warm defenders who emphasize the general spirit of political compromise. Small states for the purpose of defense seek union with other states. Union by conquest which destroys local self-government is distasteful; federalism allows a union of unequal states that because of history, tradition, and prejudice, never would unite except by preserving some of their individual powers. Federalism preserves the government of each local unit according to its peculiar racial elements, antecedents, local customs, and resources. It secures the advantages of local autonomy on the one hand and national unity on the other; possesses unity in certain matters and diversity in others, thus maintaining a fine poise between the centripetal and centrifugal tendencies in political affairs; has by its flexibility allowed the establishment of states continent-wide without developing despotism; has fostered local sentiment and educated in civic duties; has encouraged local experiment which would not be tried in a large state with a unitary government; finally, it is the only model that can be copied if a successful world-state is ever established with local autonomy in the present national states which would become the local units and world unity which would be vested in the new central government. This would keep national pride and local autonomy intact and establish political world unity.

CHAPTER IX

DISTRIBUTION OF POLITICAL POWER — LOCAL GOVERNMENT

IN this day of large states it is inexpedient for the central government to exercise all political powers. Therefore the area of the state is divided into units for administrative purposes chiefly. These local units are distinguished from the central government partly on the basis of area and population and partly on the basis of function. The central governments usually deal with foreign affairs, civil and criminal legislation, marriage and divorce, the larger public works, the army and the navy, and contracts and sales.

1. Functions of Local Government

It is safe for the state to entrust local communities with the performance of certain things, such as roads and bridges, municipal transportation, lighting, parks, water supply, and certain phases of education. But the question, What is general and what is local? is a close one in these times of rapid transit, widespread knowledge, and general social and economic interdependence. Sometimes the local units are entirely dependent upon the central government for their existence — as in Italy, France, and England. Sometimes they have pro-

tection in the constitution, as in Germany, Switzerland, and the United States. Furthermore, the smallest local units are frequently authorized by the primary or commonwealth divisions in states that have the federal form of government, as the United States and Germany. Finally, in some cases the local units are historic and antedate the present state, while in others they are merely artificial units created for convenience of local administration.

2. Kinds of Local Government

The different units of local government are (1) the commonwealth; (2) the rural; (3) the urban.

(a) The Commonwealth. — In the federations, as described above, the primary local units are in a certain sense coordinate with the central government; that is, they enjoy a guaranteed position in the state by virtue of the constitution. In some of the present states they were originally independent states and became completely absorbed into states with unitary government and lost their independent position, or became units in a new state with a dual, federal form of government. These commonwealth governments in the federal system retain many of their former powers. The central governments become enlarged or magnified commonwealths, while, on the other hand, the commonwealths become reduced or miniature copies of the central governments. In the federations, then, the commonwealth governments are similar to the central on the one side and to the local on the other. They in turn

create local units subordinate to themselves. As the attachment to the new central government grows strong, the old ties loosen somewhat and the commonwealths tend to diminish to the position of administrative units in spite of their constitutional position in the state.

In Switzerland, the primary units are called cantons, each having a unicameral legislature. In four of the small cantons, the legislature is composed of the entire body of voters, while in the other cantons it is a representative body. The executive consists generally of from five to seven members chosen by either the voters or the legislature and exercises both executive and legislative powers. The people in each canton have a large popular control over both constitutional and statutory lawmaking by means of the initiative and referendum.

In Germany the primary local units are kingdoms, grand duchies, duchies, principalities, and free cities. The kingdoms, grand duchies, duchies, and principalities have constitutions, hereditary executives, and legislatures of one or two houses consisting of elected, appointed, and hereditary members. The free cities of Hamburg, Lübeck, and Bremen have a constitution, a burgomaster who directs the administration, a senate elected for life which performs executive powers, and an elective legislative body called the House of Burgesses.

In the United States the primary units are called states and have elaborate constitutions, an elective chief executive, and other members of the executive department, which makes the executive power

decentralized and politically irresponsible. There is a bicameral legislature that exercises larger powers than are exercised by the legislatures of the corresponding units in the other important federations. There is a full complement of courts, with judges usually elected by the voters for comparatively short terms.

(b) Rural Government. — In some cases the rural units of local government were historic units and in the course of political amalgamation into large states have retained a vital place in the new states, *e.g.,* the English parish, the early New England towns, and the French communes; but in other cases the local units are artificial affairs; for example, French departments, and the townships and counties in the western states of the American Union that have no natural or historic boundary lines but follow surveyors' lines of latitude and longitude. From another standpoint the local divisions may overlap each other, as in England, or they may be on the multiple order, the subordinate units being regular subdivisions of a larger unit, as in the United States and France. Again, the local units may possess large governmental powers, being practically self-governing, as in England and the United States, or they may be simply administrative units of the state, with the local affairs controlled by the central government and its officers, as in Prussia and France.

A comparison of the local government areas in some of the leading states reveals great variety, both in form and in function.

In England up to the nineteenth century, there was great confusion in overlapping areas and powers. The parliamentary acts of 1835, 1882, 1888, and 1894 systematized the local governments, and established a large local autonomy under the general supervision of the local government board. The Saxon units, the township, the hundred, and the county still persist, but under the name of the parish, the district, and the county.

Since 1888 there have been two kinds of counties in England. The historic counties are retained as areas for parliamentary elections and for the administration of judicial and military affairs. The crown appoints a lord lieutenant, a sheriff, and justices of the peace. The other kind of county is called the administrative county. Each county has a popularly elected council which in turn elects a certain number of aldermen. This county council usually consists of about seventy-five persons, elects its chairman, meets about four times a year, and exercises important local powers.

Each administrative county is divided into rural districts with an elected council which meets once a month and whose chairman is a justice of the peace. The district council has charge of the administration of the different public health acts and of highways.

The parish is the smallest local unit. If it contains less than 300 inhabitants it performs its function through a "parish meeting." In the larger parishes there is a popularly elected council. The parish is a unit for the collection of rates and the

election of representatives. Since 1834 several parishes have been grouped for "poor law" unions.

The system of local government in Prussia is typical of local government throughout the German Empire. It is very complex, and a short statement must suffice. The units of local government are the province, the district, the circle, and the *Gemeinde,* or the commune. The district exists for administrative purposes only, while the other three are for both administrative and local governmental purposes.

In the province there are two sets of officers: (1) a president appointed by the crown, and a provisional council which assists and checks the president. The president is the direct agent of the minister of the interior and is a part of the bureaucratic Prussian system. These officers have charge of matters of general interest, such as police and education, and usually act through the agents of the subordinate units. (2) The affairs of peculiarly local concern are in the hands of a provincial committee, an executive elected by the provincial assembly, and an assembly chosen by the diets of the circles. The assembly has rather comprehensive powers. It is summoned and dissolved by the crown, who has a veto on its legislation.

The district is a division for central administration and has no organs of local government. The officiary are appointed by the crown, the president being a very important local officer. Most of the work of administration is done through boards and committees.

In the circle there are two sharply differentiated sets of functions, the central and the local, both carried on by one set of officials. The head of the administration is an officer nominated by the diet of the circle and appointed by the crown. This officer is assisted by a central committee selected by the diet. The central diet chooses all elected officers of the circle, district, and province, enacts local legislation and votes the taxes for provincial and central purposes.

The smallest local unit is the commune, which has an elective chief magistrate who has usually a small board or council and a small representative or popular assembly. This unit has charge of local schools, churches, and roads, and has not developed much vitality. It is usually small and has little financial strength.

The Prussian system emphasizes local government with strong centralized state control.

Local administration in France is highly centralized, with officers of the central government having large authority. There is no distinction between rural and urban local government.

The department is an artificial unit having the largest area of local government. At the head of this unit is a prefect appointed by the president of the republic on the nomination of the minister of the interior. The prefect is the most important of all local officers in France. He is both agent of the central government and head of the local administration. He directs the execution of the laws, has control over all administrative officials, furnishes

information to the central government, and has considerable power over the communes. The prefect is assisted by an elected general assembly consisting of one member from each canton. It meets only twice each year for limited terms and has small powers. The president of the republic has power to dissolve this body and to veto its acts.

The *arrondissement,* or district, has a subprefect and a small elected council. This council allots to the communes the taxes which the general council of the department has levied. It is also an electoral district for the Chamber of Deputies.

The canton is an electoral and judicial, not an administrative district.

The commune is the only historic unit of government in France. It antedates the Revolution and is the most vital unit of local government in the republic. It has an elected council which in turn chooses an executive from its own number who exercises both central and local powers.

France is governed largely from Paris by the central authority, hence there is little vitality in the local units.

In the United States there are two types of local government, the township and the county, both being historic, reaching back to colonial times. In New England, where the early settlers lived in small, compact groups, the town type prevails. This type of government developed because of religious, educational, economic, and defensive reasons. In the town the chief organ of government is the meeting of voters which assembles once a year, usually

in the spring. This body elects officers of the town for the ensuing year and transacts a certain amount of local governmental affairs directly. The town officers consist of from three to nine selectmen, a clerk, a treasurer, assessors, collectors of taxes, and the school committee in towns where the district system does not prevail. The popular meeting of the voters levies the taxes, authorizes the expenditure of revenues, and passes on matters of local importance. The county unit prevails in the South and was used by the scattered aristocratic planters in colonial times. It has a board of county commissioners, a treasurer, an auditor, a sheriff, a superintendent of schools, a coroner, and an attorney.

In the middle Atlantic states in colonial times the town of New England and the county of the South were both utilized, thus forming the mixed or town-county type. New York developed the supervisory system, emphasizing the town, while Pennsylvania developed the county-commissioner type, emphasizing the county. The western states have followed either the New York or the Pennsylvania type of mixed government, dividing administrative affairs between the two units. The historic types of the early colonial times have become largely artificial in the West. The South, in addition to the county, now uses the township for a few purposes, mainly for schools, while New England, in addition to the town, uses the county for a few administrative purposes, such as military and judicial affairs.

In many American states there are school districts for the local management of schools, but even

here the town and the county frequently exercise some control.

(c) Municipal Government. — The city has played an important rôle in government. Several of the ancient states had cities for their central political power. In Greece and Rome the city was the state, as described above. The fall of Rome almost ruined the city, but the Crusades developed commerce between the East and the West, and the economic importance of urban centers partially restored the political importance of the city. Several free cities, mostly republics, arose, some of which are still in existence in Germany. The development of the absolute monarchy and national states reduced the cities to a subordinate position in the states. In recent times there has been a revival of interest in the city, as practically half the population of the leading states of the world lives under urban rather than rural conditions. Many causes have contributed to the growth of modern cities, among which may be mentioned the factory system of manufacture, the great transportation systems which have developed and made possible world markets, the necessity of distributing centers, the improvement of sanitary conditions, and finally, the attraction of superior educational and social advantages.

Modern cities, while subordinate to the central government, have considerable local autonomy. They are corporations and have charters granted by the state either in constitutional or in statutory law. In England and the United States the powers

of the city are enumerated, strictly construed, and frequently changed by legislation, while on the Continent, the city exercises general powers not specifically prohibited. The city has a large latitude under general acts and the control of the central government is through the administrative branch rather than through the legislative branch, as in the United States and England.

In all the leading states of Europe the cities have elective councils with terms of from two to six years. Sometimes there is partial renewal, and minority representation. In England the council exercises the leading powers, selecting and directing all the administrative authorities who act as their agents. On the Continent the council chooses the executive officers but there is more coordination between the executive and the council — each sharing in the functions of the other. In Europe, except in England, the executive dominates municipal administration. The executive is vested in a single head except in Germany, where there is an executive board. In England, France, and Italy the mayor must be chosen from the council and has no veto. In all European cities much is made of permanent tenure and administrative efficiency.

In the United States both mayor and council are elected by the voters. The American city has been governed on the theory of the sharp separation of governmental powers, the city being the government of the state in miniature. Before 1830 the council dominated the municipal government. Then came the enlargement of the powers of the mayor

and finally, acting on the theory that the city is similar to a private business corporation, there is being introduced the so-called "commission form" of city government, which vests both administrative and legislative powers in a small body of commissioners elected at large, each commissioner being at the head of a department of the city government with expert subordinates selected on the basis of merit. A large element of popular control is exercised by means of the initiative and referendum and the recall.

CHAPTER X

DISTRIBUTION OF POLITICAL POWER — COLONIAL GOVERNMENT

PAUL REINSCH says: "A colony is an outlying possession of a national state, the administration of which is carried on under a system distinct from but subordinate to the government of the national territory." Practically all of the leading states of the world have outlying territories that occupy a dependent position ranging from a "sphere of influence" to approximate independence or self-government. Today there is practically no person in the world that is exempt from some form of political government; but forty per cent of the land surface and 500,000,000 people are found in colonies.

Of course this form of government runs counter to natural boundaries of states and the principle of ethnical homogeneity. Various methods of acquiring colonies have been utilized at different periods. Among these may be mentioned: (1) military conquest; (2) cession; (3) purchase; (4) discovery, occupation, and settlement. The leading motives for colonization have been: (1) movements of population or natural expansion; (2) the spirit of individual adventure; (3) religious persecution and missionary propaganda; (4)

political unrest; (5) business expansion and the search for new markets.

1. Rise of Colonies

The ancient world began colonization. Phoenicia, situated between Egypt and Mesopotamia, acquired a large commerce which resulted in establishing outlying trading posts, the most notable being Carthage, which developed into a great agricultural settlement, and in turn established trading branches in Spain; attempting to do the same in Sicily, she clashed with the growing power of Rome and was crushed. Greece established numerous colonies. The Dorian invasion of the Peloponnesus drove many fugitives to seek new homes; likewise the Spartan and Persian invasions scattered the tribes. Internal jealousies among the city-states caused secession and the establishment of new cities in other parts. But these were hardly regarded as dependent but rather as independent political units. To be sure, Athens exacted tribute from the cities she established in the Aegean in return for naval protection given to them. Rome founded *colonia* by giving land to the soldiers that captured it, but these territories were regarded as outlying military defenses for the protection of the Empire, rather than colonies in the modern sense. In the Middle Ages some colonies were established by the Italian cities. The old vitality of the cities revived, and, freed from the domination of the Emperor and the Pope, they asserted their political independence by re-establishing their industrial, commercial, and po-

litical integrity as free cities on the basis of the ancient city-state. Pisa, Florence, Genoa, and Venice founded trading posts or colonies in the Orient which became strong during the Crusades, but declined with the invasion of the Turks and the discovery of the new sea route to India.

Modern colonization began with the discovery of the New World. The sixteenth and seventeenth centuries were times of great colonial activity. Portugal, under the leadership of Prince Henry the Navigator and his successors, doubled the Cape of Good Hope and secured a rich monopoly of the trade of the East. The Portuguese planted trading stations in Africa and India, and reached as far as China and Japan in the East and to Brazil in the West. The nobles of Portugal received feudal grants and had absolute power over the natives. The colonies existed for the purpose of commercial exploitation by the mother country.

When Spain had successfully overthrown the Moors and discovered the New World, she entered upon a period of great colonial activity. The New World furnished a theater for the activity of Spanish soldiers and nobles and was an outlet for the missionary zeal of the clergy. Portugal and Spain were rivals in the race for commercial advantage, and in order to settle the quarrel between these two countries, Pope Alexander VI drew the compromise line of demarkation in 1493 between the rival claims of these two countries. Spain then directed her attention to the western world, taking possession of the West Indies, Central America, the Philip-

pines, a considerable portion of North America, and all of South America except Brazil. The Spanish colonial policy rested upon the theory of profit to the conquerors with no liberty or self-government to the natives. Through the Spanish colonies, Spain developed a national cupidity that almost ruined this proud power. The most stringent trade monopoly existed, which finally led to the revolt of the colonies and the establishment of their political independence.

The Dutch colonial power was won mostly through the desperate struggle carried on between Spain and Holland. This was first a land war, but when Portugal came under Spanish control in 1580, Spain shut off Dutch industries from supplies drawn from the East through Persia. Then Holland turned to the sea and attacked the Spanish colonial sources of supply and won her colonial footing in the East. Finally, with Spain weakened by the English navy and the fall of the Armada, Holland turned her attention to the West and won a small foothold in the West Indies, South America, and North America. The Dutch East India Company and the Dutch West India Company were great commercial monopolies. They misgoverned the Dutch colonies and weakened the government at home.

England and France were the leading colonial powers of the seventeenth and eighteenth centuries. The French, through fur-traders and missionaries, took possession of the two great river basins of North America, the St. Lawrence and the Mississippi, but developed no great colonial policy because

they tried to hold a continent with a trading company, a soldier, and a priest.

The English government was slow to realize the importance of colonization. The first voyage of the Cabots was made in 1497, but it was more than a century later that the charter for the first successful English colony was granted. Here again the idea was commercial; but the colonists developed a self-reliance and political capacity that made them triumphant in North America. They absorbed the Dutch, held the Spanish at bay, and after nearly three-fourths of a century of conflict with the French, emerged in 1763 with all the territory east of the Mississippi River. As early as 1660 the first of the English navigation acts was passed, laying restrictions on the colonies in the interest of England, and at the close of the French and Indian War these restrictions became so oppressive that the thirteen English colonies of North America revolted, for the reason that England had practically adopted the old Spanish colonial policy. The outcome was the American Revolution, which resulted in the independence of these thirteen colonies and the formation of a new state made up wholly of former colonies. Soon after the successful revolt of these colonies, England reformed her colonial policy and at the present time is regarded as the greatest colonial power in the world.

2. Present Systems of Colonial Government

The revolt of the thirteen English colonies and the success of the United States taught England a

great lesson, with the result that she changed her attitude toward colonies. Now the situation in English colonies is studied from the standpoint of race, tradition, character, resources, environment, the stage of civilization reached, etc. After this is done, each colony is allowed such participation in its own government as experience and the situation seem to justify. The crown nominates the executive head and has a veto on all colonial legislation, while the judicial committee of the privy council is the supreme court of appeal for the colonies.

At present there are three grades of English colonies: (1) the crown; (2) the representative; (3) the responsible. In the crown colony the people have no voice in the government, which is carried on entirely by officers appointed by the crown. In the list of British crown colonies are found the Straits Settlements, Trinidad, Hongkong, Fiji, Sierra Leone, Honduras, Gibraltar, Helena, Singapore, Aden, and others.

The representative colonies have some officials elected by the colonists, while others are appointed by the crown. The executive officers are appointed by the crown, while the legislatures consist sometimes of one house partly elected and partly appointed, or sometimes of two houses, one elected and the other appointed. In general, legislation is in the hands of the colonists, subject to veto, while administration is in the hands of officers appointed by the crown. A considerable number of English colonies have this form of government.

The responsible colonies are both representative

and responsible. The crown has only a veto on legislation and appoints the governor, who is merely nominally the chief executive. The government is that of the United Kingdom in miniature. These colonies include Canada, Newfoundland, New Zealand, Australia, and the Union of South Africa. These colonies are practically self-governing.

Closely connected with the development of the responsible colonies which exercise almost independent powers, is the subject of imperial federation. After the successful revolt of the thirteen English colonies in North America, the question of independence was agitated in the other English colonies for over half a century; but in later years the idea of local independence for small political units has almost disappeared. The imperial idea has a fascination in this day of large states. It seems probable that at least the responsible colonies may retain their local autonomy and acquire representation in the British parliament, thus establishing a system of imperial federation.

France lost her Indian and American colonies in the eighteenth century. During the latter part of the nineteenth century she has partially recouped herself in Asia and Africa. She has Madagascar and large possessions in China. In addition she has the greater part of the Sahara, the valley of the Niger, and central Africa north of the Congo, in all about 4,776,000 square miles, and a colonial population of 41,653,000. Most of the territory is inhabited by uncivilized peoples and is under military government. In the older and more civilized colo-

nies the principles of local self-government and representation in the French parliament are recognized. Guadeloupe and Martinique have elected councils; Algeria is divided into departments the same as France; Cochin China, French India, Guinea, Senegal, Guadeloupe, Martinique, Réunion, and Algeria have representatives in the French parliament.

German colonies take the form of "spheres of influence" and "protectorates." These are mostly in Africa. Portugal has remnants of a once proud colonial empire, mostly in Africa. Italy and Belgium also have parts of Africa. Holland has colonies in Asia chiefly. All these colonies are governed practically on the basis of an English crown colony, the elective principle being entirely lacking.

Most of the territory of the United States once had a colonial or dependent status. The territorial expansion up to 1898 was in the same continent and contiguous, except Alaska, practically uninhabited and easily settled by people from the older sections of the United States. Beginning with 1898, widely scattered islands have been added, mostly inhabited by partially civilized peoples. The original territories were governed by (1) officials appointed by the central government; (2) locally elected legislatures; (3) an elective territorial delegate to Congress with right to debate but not to vote; (4) full share in civil liberty; (5) after a probationary period, admission into the Union on an equal footing with the original states. Alaska and the District of Columbia are governed by Congress, Alaska being administered by a governor and other ap-

pointed officials, the District of Columbia by commissions.

Hawaii is governed in the same manner as the original territories; but in the other insular possessions there is a restricted civil liberty and the form of government is either that of the English crown colonies or the English representative colonies. Porto Rico sends a delegate to Congress, while the Philippines send two delegates to Washington to act in a semi-diplomatic capacity.

Modern colonies have affected and in all probability will continue to influence the states of which they are dependent parts. The most dominant influences resulting from colonies are as follows: (1) military and naval affairs; (2) commerce, tariffs, etc.; (3) the duty of dominant races to so-called uncivilized peoples; (4) world empire on the federal principle.

CHAPTER XI

GOVERNMENTAL ORGANIZATIONS

IN every state there develop, to a greater or less degree, differentiated organs with a specialized set of functions. These organs in the widest and most inclusive sense may be said to include: (1) the electorate, which in an indirect sense is the government when it chooses and recalls officials, and in a direct sense when it acts as a *posse comitatus,* sits as a jury, exercises legislative power by means of the initiative and referendum, or gives a mandate through a plebiscite; (2) the convention, when making, revising, or amending the constitutional law; (3) the political party, especially when legally recognized; (4) the usual or ordinary branches of government called the legislative, the executive, and the judiciary. It is the last-mentioned group that has held the attention until very recent times. These organs perform the most continuous service; the others act intermittently.

As to the powers exercised by the ordinary organs of government, there are two main contentions: (1) the triple, that is the legislative or will-declaring, the judicial or will-interpreting, and the executive or will-exercising; (2) the dual, or the will-declaring and the will-executing, which includes judicial administration and executive administra-

tion. The dual theory is held by some French and American writers: but the triple theory has had the widest acceptance, both in ancient and modern times.

Separation of Powers

Originally governmental powers were centered in one organ which was usually the king. There was no legal restraint, and as a result the king became tyrannical, which led to some kind of legal or popular control over him. Then as functions of government became differentiated into legislative, executive, and judicial, there was a demand that a separate set of organs should exercise these different functions, each acting as a check upon the other and all forming a balanced system. The strongest demands for the separation of powers have come from democracies.

The idea of the triple division of governmental powers is found in the writings of the ancients. Aristotle divided the powers of government into deliberative, magisterial, and judicial. Polybius, describing the Roman republic, remarked on the system of checks and balances in the powers of the senate, the consuls, and the tribunes. It should be noted, however, that the Athenian *Ecclesia* exercised all three powers, while the Archons exercised both administrative and judicial powers. The Roman senate exercised legislative and administrative powers, while the consuls exercised both administrative and judicial powers. During the period of the Roman Empire, the Middle Ages, and the

rise of the modern absolutist kings, the theory of the separation of powers was very obscure and feeble. Jean Bodin pointed out the danger of concentrating all governmental powers in one branch. The theory of separation was emphasized and fairly well formulated after the two great political revolutions of the seventeenth century. These revolutions, it will be remembered, were directed against the arbitrary exercise of political power. But it remained for the French Baron de Montesquieu, 1748, to formulate the modern theory and to emphasize the division of governmental powers as the only safeguard of political liberty. In his work, *Esprit des Lois,* he says:

If the executive and legislative power are united in the same person or in the same body of persons, there is no liberty because of the danger that the same monarch or the same senate may make tyrannical laws and execute them tyrannically. Nor, again, is there any liberty if the judicial power is not separated from the legislative and the executive. If it were joined to the legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the lawmaker. If it were joined to the executive power, the judge would have the force of an oppressor.

The English Sir William Blackstone, in his *Commentaries on the Laws of England,* 1765, says:

In all tyrannical governments the supreme majesty of the right both of making and enforcing laws is vested in the same man or one and the same body of men; and when these two powers are united together there is no public liberty.

The views of Montesquieu and Blackstone became almost the ark of the political covenant to the American and French constitution-makers in the latter part of the eighteenth century. The Massachusetts constitution of 1780 reads as follows:

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; and the judicial shall never exercise the legislative and executive powers or either of them; to the end that it may be a government of laws and not of men.

This same theory of the separation of the powers finds expression in the constitution of the United States, although not in such emphatic language. The *Federalist,* in defense of the new constitution, states:

> The accumulation of all powers, legislative, executive, and judicial, in the same hands, whether a few or many, and whether hereditary, self-appointed, or elected, may be justly pronounced the very definition of tyranny.

The French Declaration of Rights, 1789, declares:

> Every system in which the separation of powers is not determined, has no constitution.

It is now known that the theory of Montesquieu and Blackstone, based on the division of powers in England was only approximately true in the eighteenth century and far from true at the present time. The cabinet system unites the legislative and

executive closely, and makes the legislature almost if not quite omnipotent. The House of Lords is a branch of parliament, but it acts as the supreme court for the United Kingdom. In France, the President is elected by the parliament and his cabinet is practically responsible to the Chamber of Deputies. The executive and the legislature are brought into cooperation by the cabinet system in the other countries of Europe that have the responsible or parliamentary form of government. The powers of government are not distributed and balanced in Germany. The executive dominates the entire system. The Emperor is the executive of the central government, but as king of Prussia he has large legislative powers. He enjoys, through his appointed representative in the *Bundesrat,* a large legislative initiative and can interpose a veto on all constitutional amendments. In the United States, the President, in addition to having the executive power, exercises legislative power through the veto; and judicial power through the pardon. The senate exercises executive power in making appointments and judicial power in trying impeachments. The courts have the executive power to assist in making appointments, and the legislative power to declare acts of Congress unconstitutional.

It is thus seen that the principle of the sharp separation of powers with differentiated governmental organs is not necessary as a protection to liberty in the present governments or states. The judiciary is probably the most independent in all modern states, while the legislature is the most dominant, especially

in states having the cabinet or responsible system of government. In states having non-parliamentary government, the executive enjoys considerable independence. In no state is the separation of governmental powers complete. Each department exercises functions primarily belonging, in strict logic, to the other. The constitutions of the American states now usually read as follows:

> The powers of government shall be divided into three distinct departments — legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in instances expressly provided in this constitution.

This establishes the necessary separation or the check and balance system, and provides a salutary flexibility which, with the unifying effect of political parties, brings all governmental organs into harmony for formulating and administering the will of the state.

CHAPTER XII

GOVERNMENTAL ORGANIZATIONS — THE LEGISLATURE

REPRESENTATION has been carried out best in the legislative department of the government. The ancients did not have legislation by representative bodies; the legislative power was exercised either by the king or by the people directly.

1. Theory and Practice of Representation

The idea of representation is comparatively modern and had its beginning in the *Folkmoots* in Germany and the *Witenagemot* of England, the latter evolving by the close of the thirteenth century into a real representative system, including the three estates — the nobility, the clergy, and the commons. In the fourteenth century these three estates established the bicameral system, with the nobility and the clergy constituting the House of Lords, and the commons the House of Commons. The continental cities helped in the formation of the representative principle, but the people as people did not demand representation; they were satisfied with guild, or organization representation of various kinds. In France, the nobility, the clergy, and the townspeople formed the States General in 1302. This body gave the king advice and assistance in levying taxes. The Cortes in Spain and the vari-

ous diets in Germany developed along the same lines as the States General in France. The medieval system rested upon distinct classes, with the deputies of each group or class sitting apart; sometimes there were as many as three or four different chambers. The deputies were fettered by being under instructions how to vote. The latter part of the eighteenth century saw the decline of representation based upon the different estates. Of course a few vestiges of class representation lingered. The modern idea in most states is that a representative stands for the whole people and not merely a class; that he is allowed a large measure of individual initiative and is not bound by instructions as a rule, except in some states that have the federal form of government. The members of the German *Bundesrat* are instructed, and the state legislatures made some efforts to instruct United States senators before the Civil War, but this practice in the United States has fallen into decline and will undoubtedly disappear because of the popular election of United States senators. The modern legislature is a compromise between the will of the state as expressed either by one person or by the voters. The state will is now expressed by a considerable body of the representatives of the people. Since the legislature is a deliberative body, it should consist of a fairly large number of persons if the numerous interests, points of view, and various territorial sections of the community are adequately represented. Most modern legislatures have several hundred members.

The actual practice of representation has varied widely at different times and in different countries. Many differences of opinion have existed as to the best method of securing real representation and mature deliberation in legislation. The United States under the confederation had a single chamber, as did France under the constituent assembly and the second republic, also the German parliament of 1848. The unicameral legislature still exists in Greece, Luxembourg, Servia, the Canadian provinces of British Columbia, Manitoba, and Ontario. It was tried and abandoned in Spain, Portugal, Mexico, Ecuador, Peru, Pennsylvania, Vermont, and Georgia.

The advantages claimed for the unicameral system are that it secures unity and not duality, that there is one will for the state which should be expressed by one body; otherwise, it is argued, there will be a division of sovereignty. Opposition to the unicameral legislature usually runs as follows: If it is unchecked by a second chamber, it may represent merely the passing whims of the moment and decide important questions on the basis of oratory, emotion, or passion. Again, if the members are elected all at the same time, it will represent the opinion of the community at a particular time on only a definite set of issues and may be out of harmony with public opinion before its term expires. It is argued further that if one house really represents the people, a second house is necessarily aristocratic and unrepresentative.

The advocates of the bicameral system point to

the fact that the leading states of the world have two-chambered legislatures. In the United States and Germany this came about because of the struggle between confederatism and nationalism which resulted in a compromise; but France, the South American republics, and Japan adopted the plan because of its merits. The advantages of the bicameral legislature may be stated as follows: (1) It is a curb to hasty and one-sided legislation and encourages balance, consideration, and well-digested legislation. (2) It secures liberty to the individual against the impulsive action of a single chamber which tends to become tyrannical, despotic, and omnipotent, encroaching upon both the executive and judicial branches of the government. (3) It gives an opportunity for the representation of different classes and interests in society, thus allowing each to temper and restrain the other. The radical element influences the reactionary and the reactionary checks the radical, bringing about as a compromise product a progressive conservatism which is the permanent method of progress. Many claim that the two houses should rest upon a different base, that the members should have different qualifications, length of term, etc., in order to secure the proper action, interaction, and reaction and still not produce deadlocks and hopeless obstruction.

The principle of equality of political units prevails in making up the upper chamber in most federal states; but this is not true for Germany and the Dominion of Canada, nor for the centralized republic of France. A favorite method in the past

was to have representation among the various divisions of the state on the basis of the value of property in each division; but this method has all but disappeared. The almost universal plan now is to have representation based on the total population, the ratio varying widely in different states.

Closely connected with apportionment of representatives is that of minority representation of political parties. Many claim that with the development of political parties has come about a tyranny of the majority almost as bad as royal tyranny in the past. The district system is in the interest of the minority party, as the majority party in the state is not apt to be the majority party in every district of the state. If a group of voters is allowed representation in proportion to its voting strength, this is called proportional representation; but if there is simply some representation to a minority, this is called minority representation. Various plans of proportional and minority representation have been tried, but with no great success.

The idea of proportional representation has been carried to a queer extreme in Prussia and Saxony, where the voters are divided into three classes according to the amount of taxes paid, each class choosing one-third of the representative body. There are numerous writers who maintain that every social and economic group should be represented, arguing that if proportional party representation in general is sound, then representation according to differentiated groups is also sound; but it is contended on the other hand that this plan

tends to emphasize class distinctions with attendant disintegration and antagonism.

In choosing the representatives, all the members of the legislature may be elected on a general ticket in the state at large; but this has not worked well, so the state has been divided into electoral districts. In these electoral districts two methods prevail. One method is to assign a number of representatives to be elected in each district, which is called the general ticket method. The other method is to form as many districts as there are members to be elected, which is called the single-member district plan. Most states now use the latter method. It is simple and is supposed to insure intelligent voting and a certain degree of minority representation. It is claimed that it offers an opportunity for the gerrymander, produces inferior representatives, and unduly emphasizes localism.

In some countries the method of choosing the upper house, in addition to election, rests upon the principles of heredity and appointment, or a combination of both.

2. Legislatures of Different States

(a) Composition and Powers. — In France each district sends at least one deputy to the Chamber of Deputies. Algeria is allowed six and all the other colonies ten. The deputy must be a qualified voter, twenty-five years of age. His tenure of office is four years. In Germany each commonwealth sends at least one member to the *Reichstag;* but the apportionment is based roughly on population. A

qualified voter is eligible and his term is five years. In England each district sends one member and the universities nine members. The representatives in the House of Commons do not need to reside in the district which elects them. Each member is supposed to represent the whole Empire. The term is seven years unless parliament is sooner dissolved. In the United States each commonwealth has at least one representative to the House of Representatives; but the basis of representation is according to population in general. A member of the House of Representatives must be twenty-five years of age, seven years a citizen of the United States, and a resident of the commonwealth electing him. The term of office is two years. Territories have delegates who have power to debate but not to vote.

The name "Upper House" originated at a time when this was perhaps a proper designation. It is now a misnomer because constitutionally the "Upper House" is usually the weaker of the two houses. The principles of heredity, appointment, and election all are found in these bodies; but heredity is fast losing ground. It has not been used recently in the establishment of a new "Upper House" except in Japan. The English House of Lords consists of archbishops and bishops of the established church; Scotch peers, elected by the body of Scotch peers from their own number and holding office only during the existence of one parliament; Irish peers, chosen for life from the body of Irish peers; four lords of appeal in ordinary who are distinguished jurists and appointed by the crown for life, and act

as judges when the House of Lords sits as a court. All other members are appointed by the crown, and their positions become hereditary. The members of the House of Lords must be male British subjects twenty-one years of age. In France each department is assigned so many senators roughly according to population. The colonies are represented in the Senate. The method of indirect election obtains. Senators must be French citizens forty years of age, and are elected for nine years, one-third retiring every three years. In the German Federal Council, or *Bundesrat,* the constitution distributes the members to the several commonwealths roughly according to population or importance of the commonwealth. The governments of the respective commonwealths appoint the members of the *Bundesrat.* Alsace-Lorraine has four commissioners with no voting power. In the United States, the senate consists of two senators from each commonwealth, formerly elected by the commonwealth legislatures, but now elected by the voters directly. The senators must be thirty years of age, nine years citizens of the United States, and residents of the commonwealths when chosen. The term is six years, one-third retiring every two years.

In general, the two houses are supposed to be coordinate or equal, but in practice the popular branch has control over money bills. In the states having parliamentary government the popular branch has made itself practically omnipotent. In the United States, the Senate is more powerful than the House because of the fact that it shares

with the President the power of making appointments and treaties, and represents the commonwealths in their separate capacity, also because of length of term and partial renewal every two years. The German *Bundesrat* is much stronger than the *Reichstag* because it represents the commonwealth sovereignties. Much serious attention has been given to the subject of abolishing one house, especially in England. This has been given an impetus in the United States in regard to state legislatures because of the introduction of the "commission form" of government for cities.

(b) Organization and Procedure. — In some constitutions the internal organization and procedure of the legislative bodies are partially provided for; but usually the bodies determine such matters for themselves. The Chancellor, who is appointed by the German Emperor, presides over the *Bundesrat;* the Lord Chancellor, over the British House of Lords; the Vice-President, over the United States Senate; and lieutenant-governors, over state senates in the United States. Specific parliamentary rules prevail on the introduction of bills, three separate readings on different days, methods of voting, publicity, privileges of members, regulations on debate, and especially the closure of debate.

The size of most modern legislatures, especially the popular branch, makes deliberation wellnigh impossible. This fact has led to dividing the business of each house among several committees, thus facilitating business and taking advantage of the principle of specialization. These committees reject

many bills and improve the quality of others. It has been said that in the United States we now have legislation by committees with ratification by the legislature. The Senate of the United States elects its committees, while the Speaker of the House appointed the committees until 1910, when the committee on committees was provided. In Germany the *Bundesrat* has some standing committees that remain in session all the year. They are chosen in part by the Emperor and in part by election. The other committees are chosen by the *Bundesrat*. There are no standing committees in the *Reichstag*, but instead there are seven "sections," and these designate the required committees from time to time. In France each house has a standing committee on finances. For the choice of other committees, the members of each house are divided by lot each month into *bureaux*, nine in the Senate and eleven in the Chamber of Deputies. For almost every bill these *bureaux* elect a special committee. In England the cabinet is a grand committee on legislation. Committees play a very important rôle in the United States, both in Congress and in the state legislatures; but committees are not very important in Germany and England, while in France the haphazard method of choosing committees sometimes gives an important government bill to an unfriendly committee.

Most legislation is now enacted by the regular legislature, but a considerable part of it is enacted in some states by the direct popular method through the initiative and referendum, which will be described below in connection with the electorate.

CHAPTER XIII

GOVERNMENTAL ORGANIZATIONS—THE EXECUTIVE

ORIGINALLY the executive dominated all departments of the government. The chief or head of the state, with the assistance of a small council, performed all governmental work; but in course of time there came a specialization of functions and a division of labor which developed new sets of organs. Religious matters were gradually withdrawn from the state and centered in the church, and judicial work went to the courts, while the council, except for a few functions, evolved into one branch of the legislature, which, in turn, has parted with much of its work to the electorate.

1. Nature of the Executive

The executive in most states now is the organ that exercises the original powers of the government, and these powers are divided among several different officers such as the chief or executive head, whether nominal or real, unitary or plural, and various assistants. All these officials, then, taken together, constitute a kind of executive hierarchy. The legislature is constituted on a broad basis of representation where considerable deliberation is desired and frequently secured. It is in session intermittently; but the executive needs energy,

strength, and oftentimes great promptness in execution, for it is in continuous session administering and enforcing the will of the state.

2. The Executive Head

Differences of opinion and practice have existed as to whether the executive head should be plural or unitary. In Athens the executive power was divided between generals, archons, etc. Sparta had two kings and Rome two consuls. France, during the Reign of Terror, 1793-1794, had a committee of public safety consisting of eleven persons; in 1795 the executive power was committed to a directorate of five persons, and in 1799 the constitution vested the executive power in three consuls. In none of these cases was the plural executive regarded as successful. Perhaps the most successful plural executive is to be found in the modern state of Switzerland, where the two houses of the legislature in joint session elect a board of seven persons called the *Bundesrat,* or federal council. One of this council is nominated each year to the position of president; but he has no more power than his colleagues and is simply the ceremonial head of the state. Each of his seven colleagues acts as the head of a department. The *Bundesrat* in its corporate, collegiate capacity conducts the administrative work. This plan is successful partly because the legislature establishes and directs the general policy of the government. The plural, or collegiate, executive is usually weak and indecisive, lacking in energy, especially in foreign affairs and the steady

administration of the laws. It is inclined to conceal faults by shifting responsibility. The general tendency is toward the concentration of executive authority in a chief executive on the unitary plan, which has the promise of the future, for it fixes responsibility, which is a prime essential in the state's control of government.

The various methods of choosing officials, including the executive, have been described above, also the tenure of office and the relation of the executive to the legislature. In this connection it may be remarked that the hereditary principle is extensively used in Europe, while the elective, both direct and indirect, is in vogue in the Americas. In Switzerland and France the executive is elected by the legislature. The President of the United States is elected nominally by a college of electors; but in practice he is virtually chosen by a popular vote. The American state governors are elected by popular vote, as are the coordinate members of the executive departments almost universally. The Argentine Republic, Chile, and Mexico choose their presidents by indirect election, while Bolivia, Brazil, and Peru use the direct election by the voters. The advantages and disadvantages of these various methods of choice have been described above.

The tenure of the chief executives in states that have elective executives is an important problem. The tendency is toward short terms in order to make them responsible to the people. The French president is elected for seven years and is re-eligible; the president of Switzerland is elected for one year

and is not re-eligible. The usual term of an American governor is two years and he is re-eligible. The term of the President of the United States is four years and he is re-eligible, but the precedent set by Washington has prevented any succeeding president from serving more than two terms. The terms of the presidents of the Latin-American republics are from four to six years with restrictions on re-eligibility.

3. Assistants to the Chief Executive

Historically the chief executive usually had some kind of council that both assisted and checked his action. Sometimes it exercised legislative and judicial powers as well as administrative. But in due course the council developed into a second or upper legislative chamber. In Pennsylvania and Vermont most of the executive power was vested in a council. In Maine, New Hampshire, and Massachusetts there are councils at present whose consent is necessary for the governor's appointments. Theoretically the executive power is still vested in a chief executive, but it is restricted in many ways by requiring the advice and consent of a council.

In England there is a privy council which is a vestige of the old *Curia Regis*. It consists of about two hundred persons appointed by the crown; but only the members that are invited by the crown attend the meetings of the council. It meets about once a month, and its administrative functions are performed by a small body of about seventeen members called the cabinet. It advises the crown as to

the issuance of ordinances known as "Orders-in-Council." Its approval is also necessary to the validity of local ordinances. In France a very efficient council was carried over from the absolute monarchy to the republic. The present council of state consists of about one hundred members, mostly appointed by the president, who must secure the advice of the council of state before issuing ordinances. The cabinet also usually consults the council. The president is not compelled to adopt the advice of the council, because it is a French theory that "to act is the function of one, to deliberate that of several." In Germany, the United States, and most of the American commonwealths, the upper house of legislature shares the executive power with the chief executive in important particulars. The advisory council has rendered a useful service in assisting the chief executive by deliberation and the furnishing of opinions based upon expert knowledge; but it should always keep within advisory and not obstructive lines.

All the leading states, in addition to a council of some kind, have specialized administration into five distinct branches — foreign, military, judicial, financial, and internal affairs, with many minor subdivisions. Each of these five or more great departments has a minister, or administrative head; and all these taken together constitute an advisory cabinet subordinate to the chief executive.

The cabinet of England is the real executive under the direction of the prime minister, who is the leader of the political party in power in the

House of Commons. In France the president appoints and dismisses the ministers, but they are controlled by the Chamber of Deputies, to which they are collectively responsible for their general policy and individually responsible for individual acts. The chief of the ministers is called a prime minister. The president's power is weakened because all his administrative acts must be countersigned by a minister not accountable to him but to the Chamber of Deputies. In Germany the chancellor is appointed by the emperor and is solely responsible to him. All official acts of the emperor, except as commander of the military forces, must be countersigned by the chancellor. The heads of departments are subordinate to the chancellor, who in turn is subordinate to the emperor.

In the United States the president appoints the heads of departments with the approval of the Senate. Until 1867 his power to remove was regarded as incidental to the power to appoint; but the tenure-of-office act required the consent of the Senate for removal. This law was repealed in 1887. Now the president has unlimited power of removal. President Jackson established the power of the president to give direction to heads of departments, thus making them responsible to him and not to Congress. From this it is seen that the cabinet in the United States is a voluntary association of executive heads whose advice the president may or may not adopt. There is no legislative control over the cabinet except through detailed statutory provisions and the restraint imposed by a fear of impeachment.

In the American commonwealths the officers in the various executive departments have a constitutional position and generally are elected by the voters the same as the governor, and are responsible to the people through the legislature; but the inefficiency of a decentralized executive causes much complaint, coupled with the demand for a short ballot which would bring about centralization in the chief executive and the fixing of responsibility for official acts.

This brief description shows that there is cabinet government or responsibility of heads of departments in England and France, but the presidential or non-responsible cabinet in Germany and the United States, with no cabinet in any sense of the term in the American commonwealths. Here the executive power is coordinate or very much decentralized, each officer acting in a single, and not all acting in a collective, capacity.

Heads of executive departments in practically all countries exercise a large power of appointment and removal. They have much power in directing and supervising their immediate subordinates, and usually enjoy a delegated ordinance power for the details of administration. Modern state legislatures have been creating various boards and commissions whose duties are mainly executive; but they exercise much quasi-legislative and judicial power. There is a vast army of subordinates in the different administrative departments called the "Civil Service." The various methods of selection and tenure of office have been described. The steady

tendency now is to appoint on the basis of merit, which is determined by pass or competitive examinations. The incumbents hold office in some cases for a definite term of years; in others, for an indefinite term based on good behavior and efficiency, and have the right to retire from office, usually at about the age of seventy, with a pension.

4. Functions of the Executive

Broadly speaking, the functions of the executive are political — or governmental, as the French say — and administrative. The first deals with the relationship of the executive to the other departments of government and to the formation of general policy; the second, with the great mass of details incidental to present-day government. More narrowly speaking, the functions of the executive may be roughly classified as follows: (1) diplomatic; (2) military; (3) administrative; (4) judicial; (5) legislative.

In all the leading states, the diplomatic power is exercised mainly by the executive, sometimes in cooperation with the legislature. The initiative in making treaties is vested in the executive, with restraint in the form of a negative, usually by one branch of the legislature. In England the executive has full treaty-making power. The parliament has no share except in passing legislation to carry out a treaty. In the United States the power to make treaties is vested in the president, with the consent of the Senate. In addition to ratifying or negativing a treaty proposed by the president, the Senate

has frequently amended treaties liberally. The House of Representatives indirectly participates in the making of treaties through the exercise of the appropriating power to carry out a treaty. Its advice is also sought when the president and Senate conclude commercial reciprocity agreements. In the German Empire, treaties made by the emperor do not require the approval of the legislature unless they deal with a subject that comes within the purview of the legislative power of the *Reichstag*. In France, treaties that deal with peace, commerce, finance, territory, or the rights of Frenchmen in foreign countries are the only ones that must be submitted to the parliament, which only has the power to ratify or reject, not to amend. In all states the executive is the responsible spokesman in foreign affairs, having the power to receive and dismiss all diplomatic representatives of foreign states.

Control over military affairs is mainly directed by the executive in all states. This includes supreme command of the army and navy. In England, the executive has the power to declare war, while in Germany the consent of the *Bundesrat* is necessary. But in the United States and France war can be declared only by the legislature. In all countries the chief executive can practically commit his government to war, and during the war he has full direction of all military forces and campaigns, with power to suspend the writ of *habeas corpus,* establish martial law, and temporarily govern all territory captured from the enemy. It is next to

impossible to define the limits of executive power during the progress of a war.

The internal administration or execution of the law occupies most of the executive attention. As the responsible head of the civil service, the chief executive exercises large power through the appointment, direction, and removal of his subordinates. The executive also has the ordinance power in administration. This power may be either independent, supplementary, or delegated. In England, the executive exercises the general ordinance power, while in Germany, France, and the United States the executive can exercise only delegated or specific ordinance power. This power enables the executive to formulate the detailed rules for the administration and to act with energy and promptness, unrestricted by detailed legislative direction.

The judicial power of the executive is exercised in two forms: indirectly, through the appointment of judges; directly, through the power to pardon, reprieve, and commute sentences, and also through the power of general amnesty. In some American commonwealths the power to pardon is vested in a board, of which the chief executive is a member. Sometimes there are constitutional limitations on the executive power to pardon; for example, a pardon cannot be issued until after conviction; also, no pardon can be issued by the executive in the case of impeachment or treason. The pardoning power is a vestige of an old royal prerogative and exists to correct judicial abuses and for the sake of general public policy.

As stated above, the departments of government cannot in practice be kept separate and distinct. The executive plays a considerable rôle in legislation through the power to summon, open, prorogue, adjourn, and, in some states with a cabinet form of government, dissolve the parliament and order new elections. In most states with a republican form of government, the constitution provides for the assembling of the legislature, which is done automatically; but the executive usually has the power to call the legislature in extraordinary session for the immediate consideration of emergencies. What is an emergency is an executive and not a judicial question. In some of the American commonwealths the legislatures are restricted to the business mentioned in the call of the executive. In most states with a cabinet form of government, the legislature can be convened only upon the call of the executive. In Europe there are requirements compelling the executive to summon parliament. In England and Germany the parliament must assemble once each year. In France the president must summon parliament in extraordinary session when a majority of the members demand it. In many European countries, the executive has the power to prorogue the sessions of parliament to a future date; but this is not exercised in states with a republican form of government. In European states, and especially those with a cabinet form of government, the executive has the power to adjourn the legislature; but this has certain limitations attached. The German emperor can adjourn the *Reichstag* only once dur-

ing a session, and then no longer than thirty days without its consent. In France the president may adjourn the Chamber of Deputies twice during a session, each limited to thirty days. In states with the presidential system, except Germany, the executive can adjourn the legislature only when the two houses cannot agree. The power of dissolution is usually restricted to states with a cabinet form of government, and this power extends only to the popular house, and here with restrictions. In Germany the emperor must have the consent of the *Bundesrat* to dissolve the *Reichstag,* and the dissolution must be followed by a new election within sixty days and the new *Reichstag* must assemble within ninety days. In France the president must have the consent of the Senate to dissolve the Chamber of Deputies.

There are various methods of executive participation in legislation. In Europe there is frequently a speech from the throne at the opening of the parliament; but this speech has little influence on actual legislation. In the states with cabinet form of government, the ministers prepare, initiate, and defend all great government bills introduced into parliament. This gives expert initiative in the passage of bills and makes for good legislation. In Germany the emperor has the right to initiate legislation through his appointed representatives in the *Bundesrat.* In the American states, it is the duty of the executive to furnish the legislature with information and to recommend measures.

The executive in many states has a qualified or

suspensive veto. In France it merely compels reconsideration, because the same vote that passed the measure originally can pass it over the veto. In the United States and all the American commonwealths except North Carolina, the executive has the veto power, which may be overcome by a two-thirds to a three-fifths majority. In many commonwealths, the executive veto extends to items in an appropriation bill, and in Washington, South Carolina, and Virginia it extends to parts of any bill. It is almost impossible to pass a bill over the executive veto. This power prevents hasty and ill-considered legislation and arms the executive with a defensive weapon with which to protect his constitutional powers against legislative encroachment; but it is a negative and not a positive or constructive power. Many claim that with the development of party responsibility the president or governor is the only person with a state-wide view, and that his legislative power should be fully exercised and increased in the following manner: (1) by making a better use of the message; (2) by allowing the executive to initiate bills, and by giving these bills the right of way and serious consideration; (3) by allowing administrative officers entrée to the legislative chambers with the right to defend administrative measures; (4) by the executive's making a larger use of the force of public opinion.

It is the duty of the executive to promulgate and publish laws. This act has two parts — an executive certification that the law was passed in due and constitutional form, and a command authorizing its

execution. These are very formal matters in Europe. In France the laws are officially promulgated and then published in the *Journal Officiel*. In Germany the imperial laws are promulgated and then published in the *Reichsgesetzblatt*. In the United States the secretary of state publishes the law in certain newspapers, which is held to include promulgation.

CHAPTER XIV

GOVERNMENTAL ORGANIZATIONS—THE JUDICIARY

THE judicial function with a separate and distinct officiary developed slowly. In the early stages of state formation, disputes between individuals were private matters and settled oftentimes by individual physical force. Then custom exercised a restraining influence, and, finally, the state supplemented individual force and custom by enacting law and prosecuting and punishing its infractions. This was done by the executive; but with the growth of personal and property rights there developed a set of persons expert in the application of the law, and this led to the formation of a separate and distinct department of government for explaining and applying the law.

1. Nature of the Judiciary

The present courts are highly specialized and complex, having been removed from the other departments of government, until now they have become practically independent. There is a fair degree of separation and division of judicial powers and methods of procedure. There are courts for civil and criminal cases; law courts and equity courts for law and equity; military courts for army and navy; admiralty and consular courts for foreign

commerce; probate and divorce courts for family rights and inheritance; ecclesiastical courts in states where church and state are not separate and distinct; and administrative courts for the regulation of the administrative department. Again, the courts are divided on the basis of territorial jurisdiction and on the nature and importance of the questions to be adjudicated. In addition to the regular judicial officers, there is a large army of administrative officials that assist in administering judicial procedure and carrying out the decisions of the courts. Law is now supposed to be for all persons and to apply to all alike, that is, there must be "due process" and the "equal protection" of the law. The character of punishments has changed radically in recent times from the old form of retaliation and revenge, and is now based on the protection of society and the reform of the delinquent classes. The function, then, of the judiciary is to apply the customs, statutes, and written constitutions to concrete cases or legal conflicts. When facts are determined, the law is applied if it fully covers the case. If not, courts frequently amplify the law, developing a kind of "judge-made" law. To perform the delicate and important functions imposed upon the judiciary, the judges should be impartial and have expert knowledge of the law, a long and fairly secure tenure of office, and adequate compensation.

2. Organization of the Judiciary

The usual principle for the organization of the judiciary is the unitary, or one-judge, plan for the

lower courts and the plural, or collegiate, for the higher courts. In Germany, all the courts are organized on the plural principle except the lowest court, which has a single judge. Usually there are one or more courts standing at the top of the system which have a small original jurisdiction and a large appellate jurisdiction, and whose decisions are final. In England, there are two supreme courts, the House of Lords for the United Kingdom, and the judicial committee of the Privy Council for the Colonies. In Italy, there are five independent supreme courts with separate territorial jurisdiction. This is a dangerous form of decentralization, as there is frequent lack of uniformity in decisions. In Germany and France, the courts are divided into sections, or senates, with sessions sometimes *in plenum* to harmonize decisions and prevent conflicts. The United States has made little use of division into sections. There is one supreme court for the central government of the United States and one supreme court for each of the commonwealths. In Europe, there are not only the ordinary courts, applying private law, but a set of administrative courts, applying administrative law to public officers. In case of a conflict of jurisdiction between the two, a court of conflicts is provided to decide the dispute.

In states with a federal form of government, two very different judicial systems prevail. In Germany, there is one universal system for both the empire and the commonwealths. The code of procedure and the qualifications of the judges are fixed

by the imperial government. With the exception of the *Reichsgericht,* the courts are commonwealth tribunals, the judges being selected and paid by the commonwealths, and not by the imperial government. In the United States, there is a system of judicial organization, law, and procedure for the central government, and forty-eight different systems for the several commonwealths. But there is a considerable degree of uniformity, for with the exception of Louisiana, the American commonwealths are common-law states. The constitution of the United States requires that each state give full faith and credit to the judicial proceedings of other states. There is also a system of concurrent jurisdiction with an appeal by the loser to the national courts if the case is decided in a state court and the decision is adverse to a claim of right arising under the constitution or laws of the United States. Moreover, every state judicial officer must bind himself by oath to give precedence to the national constitution, statutes, and treaties, because these are the supreme law of the land.

3. Relation of the Judiciary to the Other Departments of Government

It has already been said that the executive exercises several powers judicial in their nature or closely touching the judiciary. The pardoning power and the exercise of certain powers dealing with treason and war are good examples of the judicial power exercised by the executive. In addition to these, the executive appoints the judiciary in many

states. This gives an indirect control; but it is not continuous, because the power to remove is usually lacking. The judiciary has no machinery for enforcing judicial decrees. This must be done by the executive. Sometimes an unfriendly executive has declined to carry out the judicial decisions.

The tenacity and the independence of the executive and a certain doctrinaire theory of the complete separation of the departments of government is emphasized in Europe, and especially in France, by having a hierarchy of administrative or executive courts. The theory is that the administration should not be subject to private law and the ordinary courts. The administration is under what is known as administrative law, and can be called to account only by administrative courts. In every *département* of France, the prefect and his council act as an administrative court, with final jurisdiction exercised by the council of state. The administrative courts are composed of superior executive officers and parallel the ordinary courts. There is a court of conflicts to decide questions of dispute between the ordinary courts and the administrative courts. The administrative courts are used in other countries, especially in Italy and Prussia. Even England, the United States, and many of the American commonwealths have made a small beginning by the creation of boards and commissions with semi-judicial powers.

In behalf of the administrative courts, it may be said that they make it possible to have a simple system of law and procedure for the administration;

that there is more elasticity than can be secured through the ordinary law courts, steeped in the habits of applying the law of torts and contracts to cases arising between private individuals; that it keeps the executive independent, and not subservient to the judiciary. It is claimed in opposition that the rights of individuals are often sacrificed, as the decisions seem to be *ex parte,* for the aggressor tries his own case—not generally regarded as a safe rule in jurisprudence. The inevitable tendency is to strengthen the executive.

In England and the United States, there is one law of the land applying equally to officials and private individuals. This insures a large protection to individual rights, but develops a very technical procedure. The courts, therefore, have the power to punish officials and may compel certain official acts and restrain others by the use of the writs of mandamus and injunction.

The legislature exercises some control over the judiciary, as most of the courts are created and their jurisdiction fixed by the legislature. Salaries are determined by the legislature, and frequently the judges are appointed or removed by the legislature. The removal is either by joint address or by impeachment. Moreover, the upper house in England, France, the United States, and most of the American commonwealths acts as a court of impeachment, a judicial function.

The chief relation of the legislature to the judiciary is the power to decide that legislation is null and void. In Europe, the courts have the power

to declare administrative ordinances null and void because they are in excess of legal powers. In England, the acts of minor legislative bodies have been declared illegal by the courts. The imperial court in Germany has declared commonwealth acts null and void as not in harmony with the imperial constitution. The courts in Canada and Australia may annul acts not in harmony with the parliamentary acts which are the constitutions of these states; but statutes enacted by the supreme law-making bodies in England, France, Germany, and Switzerland are legal and binding on the courts. They must be applied as passed, even if they violate the constitution.

In the United States, Latin-America, and the American commonwealths, the courts disallow acts of the legislature because they are not in harmony with the fundamental law, or the constitution. The principle of this was found in the colonial governments, as there was an appeal from the action of the legislature or executive to the king in council. The written charters paved the way for the written constitutions limiting the powers of the organs of government. The Revolution made it necessary to provide something to take the place of the appellate jurisdiction of the king in council. Even before the making of the constitution, several decisions by state tribunals had declared acts of the state legislatures unconstitutional. The constitution of the United States says:

> The judicial power shall extend to all cases arising under this constitution. . . . . This constitution and

the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, and the judges in each state shall be bound thereby.

The judges in the United States do not sit in review or revise legislation but to declare what is the law and apply it to a particular case. If the legislature has not kept within its constitutional limits, the courts disregard its acts or declare them unconstitutional. The judges really do not make the law; they decide what is the law and apply it. This practice of the American courts, acquiesced in by the other departments of the government and by the people, has made the American judiciary what Burgess has called "an aristocracy of the robe."

CHAPTER XV

GOVERNMENTAL ORGANIZATIONS — THE ELECTORATE

J. Q. DEALEY has made much of the electorate as a branch of the government, and with reason. He calls the electorate a fourth branch of the government, that is, it is an extraordinary branch with constantly growing powers, especially in democracies. The electorate exercises executive powers when it nominates, elects, and recalls officers, serves in the army or navy, and acts as a *posse comitatus;* judicial, when it performs jury service; legislative, when it drafts and adopts a constitution, or exercises the initiative, referendum, or plebiscite. The electorate exercises its powers through voting for representatives and by direct participation in governmental affairs. Some important questions arise concerning the electorate: Who should vote, and how can the voters make their power effective?

1. Qualifications for Voting

In the ancient world, a small part of the population had political power in Greece and in Rome under the republic. There was always a difference between citizens and non-citizens, based either on blood, personal allegiance, or, later, on territorial sovereignty. In England, the freeman, or warrior, managed local affairs; but the introduction of

feudalism added landholding as a qualification for voting, and the Reformation emphasized religious qualifications. The eighteenth century emphasized the doctrine of natural rights—life, liberty, and property, together with the principles of equality and popular sovereignty—and hence demanded universal suffrage; but in spite of the demand for universal suffrage, the people entitled to vote represent only about twenty per cent of the total population. In New Zealand, the voting population amounts to nearly fifty per cent. The usual qualifications for suffrage at present are: (1) citizenship and residence; (2) sex; (3) age; (4) property; (5) miscellaneous.

Most states allow only citizens, either native or naturalized, the privilege of voting. This is the general practice in the United States. However, Arkansas, Indiana, Kansas, Missouri, Nebraska, South Dakota, and Texas allow aliens to vote if they have declared their intention of becoming citizens by taking out first papers. The mobility of the population makes it necessary to have residence qualifications, with registration to prevent fraud. The period of residence varies in the American commonwealths from six months to two years in the state and thirty days upward in the precinct.

As the voting privilege grew out of military service, the privilege has been restricted to males until recently. In spite of the fact that women might occupy the throne through inheritance, woman had few civil and economic rights until the beginning of modern history; but with the

so-called emancipation of women has come a small but grudging recognition of her political ability. In England, women, if otherwise qualified, may vote at local but not at parliamentary elections. Italy allows widows who own property to vote. In Norway, Denmark, Finland, Tasmania, New Zealand, and Australia, women have the privilege of voting. In Canada, women have a limited right to vote. In more than half of the American commonwealths, women have a restricted right to vote, and full voting privileges in Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, Oregon, Utah, Wyoming, and the territory of Alaska. The arguments against equal suffrage include the following: (1) It would impair woman's feminine qualities; (2) it would undermine the home and family life; (3) only a small minority of women want the suffrage. The reasons in support of equal suffrage may be stated somewhat as follows: (1) Sex is no proper criterion for determining suffrage qualifications; (2) voting is a defensive weapon and should be possessed by all alike; (3) women voters would introduce into politics an uplifting influence; (4) it would be in harmony with the general emancipation of women.

No state that has tried equal suffrage has returned to manhood suffrage. Equal suffrage undoubtedly has the promise of the future, especially in states with a democratic form of government.

There is practical agreement in all states on an age qualification for voting. In England, France, and the United States, the minimum is fixed at

twenty-one years, in Switzerland at twenty years, and in Germany at twenty-five years.

The voting privilege has been closely connected with property-holding, especially the ownership of real estate, on the theory that the property-holder has a larger interest in the community than the non-property classes. This idea was very prevalent in the eighteenth and early part of the nineteenth century; but the democratic movement has undermined it. There are some interesting vestiges in a few states. In Prussia, political power is roughly based on the amount of taxes paid. In England, political power is based on the amount of property or the rental paid for property. In some of the American commonwealths, there are a few property qualifications, but they are insignificant.

There are several miscellaneous requirements and disqualifications. After the Reformation, a religious qualification for voting was required, but this has disappeared with the exception of a few American commonwealths. Educational qualifications have some recognition. In the United States, some sixteen of the American commonwealths require the ability to read and write. A few states have weighted, or plural, voting. The system of plural voting is found in England. It is possible under the electoral law to have more than one residence. This gives the right to vote in more than one place. In addition, the graduate of a university has the right to vote for his university representative. Belgium has had a system of plural voting since 1893, the weight of a man's vote being determined by

property, education, family, occupation, or professional considerations. The chief reason advanced in favor of weighted or plural voting is an aristocratic one, namely, that political power should be exercised by the most capable. The chief objection is that the method of determining relative values in political power is highly artificial and arbitrary.

Closely connected with the right to vote is the actual exercise of the right. There is a system of legal compulsory voting in Belgium and Spain, and compulsory voting for senators in France. This practice rests on the analogy of compulsory acceptance of certain offices and service in the army and navy and on juries. The practice of compulsory voting is not regarded with much favor, because voting should be considered as a privilege to be exercised not under compulsion, but voluntarily.

The positive requirements for the electoral franchise act as negative disqualifications for those that cannot meet them. There are some positive legal disqualifications, such as persons under guardianship, bankrupts, paupers, those who have lost civil rights, active participants in the military and naval service, those convicted of crime, idiots, domestic servants, bachelors living with their parents, peers, a few public officers, such as those connected with elections.

2. Method and Extent of Electoral Participation

(a) Political Parties.—The individual voter cannot make his opinions or power felt without collective effort and organization. The political

party has evolved as the most effective agency for directing this collective activity. The political party is an organized group of voters that profess similar ideas and principles concerning government and act as a political unit.

Real political parties do not exist in despotisms; it is only in democracies that political parties can develop. They were found in rudimentary form in the democratic cities of Greece, republican Rome, and the free cities of the Middle Ages; but it was not until the time of Elizabeth that the real origin of parties can be discovered. At that time the Puritans opposed the prerogative of the royal government. After the Restoration, there appeared the Court Party and the Country Party. At the time of the debate on the Exclusion Bill of 1680, the Tory Party took the side of the king and the Whig Party opposed the royal prerogative. These parties continued until the formation of the Liberal and Conservative parties of the nineteenth century. The minor parties in England today are the Irish Nationalists and the Labor Party.

In the United States, political parties began during the colonial period in the eighteenth century and followed much the same lines as in England. In 1787, the voters divided on the adoption of the constitution into the Federalists and the Anti-Federalists; but after the adoption of the constitution, the Federalists became the supporters of a strong central government and a liberal construction of the constitution. The Anti-Federalists became the Republicans, who believed in popular

sovereignty, state rights, and a strict construction of the constitution. During the first part of the nineteenth century the Federalists as a party disappeared, and party divisions almost ceased; but in the thirties, the Republicans reorganized as the Democrats and the Federalists reappeared as the Whigs, and finally as the present-day Republicans. These two are the leading parties today. Some minor parties have appeared, such as Anti-Mason, Know-Nothing, Greenback, Prohibition, Populist, Progressive, Socialist, and various Labor parties.

The introduction of popular government, and especially the cabinet form, has tended to develop political parties in other countries. In Latin-America, they are little more than personal factions and military groups. On the continent of Europe, the party situation is somewhat better. In France, since the Revolution, many political parties have arisen. There are about four chief party groups now — the Conservative, Republican, Radical, and Socialist — with many minor subdivisions and some "irreconcilables." The same situation obtains in Italy. This makes the operation of the cabinet form of government in these two countries difficult, as most cabinets are coalition cabinets, with no solid party strength back of them. In Germany, there are at least a dozen parties, including the National Liberal, Conservative, Center or Clerical, and Social Democrat. The last two are the largest groups. Parties are not so important in Germany as in other European states, because there is no cabinet system of government.

The function of the political party is to make a large group, presumably a majority of voters, effective. Varying interests ally themselves as party groups, sometimes based on religion, race, and different economic interests. They should be based on fundamental political principles. The cabinet system presupposes the political party and cannot successfully operate without it. In countries like the United States, with a theoretical division of the departments of government, the political party brings harmony. Otherwise, there might be a deadlock. In states that have a federal form of government and decentralization in local government, the political party secures political integration. Further, the political party makes it possible to operate a democracy and make public opinion felt and realized in a state with a large area. In short, the political party is a unifying force, whether it is legally recognized or voluntary.

The organization of political parties differs widely. In the United States the organization has reached its highest perfection. Goodnow accounts for this because of the sharp separation of the three departments of government, the great extent of territory to be governed, the impossibility of selecting candidates for the presidency and the governorship in any individual and spontaneous way, the lack of leadership which the cabinet system has developed in England, the failure of Congress and the state legislatures as leaders in the early part of the nineteenth century, and, finally, the instant success of the convention backed by a political

party. The plan of organization corresponds to the division of areas that exist for election purposes. At the bottom is the party caucus or primary. It does three things: (1) nominates candidates of the party for that area; (2) selects a committee of the party for that area; (3) chooses delegates to attend party meetings or conventions to be held in the next higher unit of which it forms a part. This is repeated until the national party convention is reached, which stands at the apex of the symmetrical system. Many abuses have appeared, such as apathy of the individual voter, machine politics controlled by a boss, the spoils system, slates, corporation and business domination. Some reforms have been instituted, such as making the primary a legally organized, instead of a voluntary, body, and having the primary do the nominating, thus eliminating the convention, and having a strict system of responsibility by enforcing corrupt practices acts for the violation of election laws. Some steps have been taken looking toward the destruction of the spoils system by filling the subordinate civil service on the basis of merit after competitive examinations. Another method is to have such positions as judicial and local offices filled by nonpartisan elections. The commonwealth of Minnesota elects its legislature on a nonpartisan ticket.

In England, party machinery is not so highly developed as in the United States. Executive and legislative machinery are in the same hands because of the cabinet system. Elections are not so frequent; but the necessity for party organization and

machinery is increasing. The two great political parties maintain organizations at London. Pretty much the same hierarchy exists as in the United States, with parliamentary, and not committee, leaders, as in the United States; but party conventions and platforms are lacking, although these exist in rudimentary form.

On the Continent, there is little conscious effort at party organization except by the Socialists and the Clericals. Most of the elections are carried on in each district independently of the other districts. Unity of effort and central control are lacking. The chief reform needed in Europe is a union of the different factions until they are welded into two great responsible parties, each highly patriotic and capable of united action. What is needed everywhere is to legalize the political party and thus make political associations responsible parts of the government.

(b) Extent of Electoral Participation. — The electorate exercises a marked control over the ordinary departments of the government. This is brought about through direct nomination, election, and recall of officers; having short terms of office, which gives opportunity for frequent elections; petitions, formal instructions, and limiting the sphere of the government in the constitution; finally, through the activity of the political party, which has already been discussed.

Another means of making the voters' will effective is through direct participation in governmental affairs. The popular assembly has at different times

been fairly effective for this purpose. The *Ecclesia* of Athens, an assembly of free citizens, acted as an organ of political control, deciding questions of peace and war; the Roman *Comitia Tributa,* or meeting of the people by tribes, exercised political power and finally developed into a lawmaking body; the people in the small cantons of Switzerland and the townships of New England met in popular assembly and enacted legislative measures directly. These assemblies were successful because they operated over small areas. With the growth of large states the popular assembly has fallen into decline and popular participation has been secured through the ballot, by means of the initiative, referendum, and plebiscite. The plebiscite and initiative are constructive, while the referendum is a negative or popular veto.

A considerable use of the referendum has been made in the commonwealths and local governments of the United States. It has been used for the adoption of constitutions and city charters, the location of capitals and county seats, the limitation of indebtedness, the alienation of public property, the creation of a bank, the raising of taxes beyond a certain amount, and the control of the manufacture and sale of liquor.

The referendum has come into large use recently in the enactment of constitutional and statutory law, giving an opportunity for the voters to apply an absolute veto to the acts of a legislative body. It has been used most frequently and successfully in Switzerland, where the compulsory referendum

can be applied to all amendments to the constitution, and the optional referendum to general statutory acts. In all the cantons, there is a compulsory referendum for constitution changes, and in all but one, either a compulsory or an optional referendum on all general legislation. This form of veto has been applied to a large number of legislative acts.

In the United States, there has been a widespread demand for the referendum recently. It cannot be utilized for national legislation; but it is used in most of the cities that have a commission form of government. About twenty American commonwealths now have the referendum on general legislation. The method in force in Oregon is typical. In this state, the legislature may order a referendum on its acts, or five per cent of the voters may sign a petition demanding a referendum on all legislative acts except emergency acts that have for their purpose the protection of the peace, health, or safety of the state. The petition is filed with the secretary of state within ninety days after the adjournment of the legislature. The secretary of state prints the full text of the bill and any arguments for or against the bill presented by any person, if money has been deposited to cover the cost of printing the arguments. The bill and the arguments are distributed to the voters before the election. There may be a referendum on the whole or on any part of a bill. If a majority of the voters vote against the bill, it is defeated or vetoed.

Some serious consideration has been given in the United States to a proposition for a popular veto

of judicial decisions. Colorado, in 1912, adopted an amendment to the constitution authorizing the recall election, or vote, on decisions of the supreme court declaring laws unconstitutional.

The initiative is a comparatively new form of electoral participation. It is positive and constructive in nature. It originated in Switzerland in the canton of Vaud in 1845. When the assembly of all the people became so large as to be unwieldy, the voters circulated a petition which compelled the legislature to act on the bill presented by the petition. Fifty thousand citizens can demand a revision of the national constitution; but there is no power to initiate statutory national laws. In all but one canton, constitutional revision can be initiated by the voters, and in all but three, ordinary statutory legislation can be so initiated. In Switzerland, this positive form of initiative has not been used as much as the restraining power of the referendum.

In the United States, the initiative has had a wider use in recent years than the referendum. In Oregon, if a bill and petition signed by eight per cent of the voters is filed with the secretary of state, a bill can be submitted to the voters at the next election, and if approved by a majority of the voters, it becomes a law without passing the legislature. In eleven American commonwealths amendments to the constitution can be initiated by the voters. There are many variations in details.

The arguments against direct legislation by the electorate may be stated as follows: (1) The people have no real, settled opinions on a majority of the

propositions submitted and the vote represents only a small proportion of the entire electorate; (2) the American distinction between constitutional and statutory law is abolished; (3) an impossible burden is imposed on the electorate by the great variety of bills and the frequency of elections; (4) the self-respect and responsibility of the legislature are lowered; (5) the opportunity for amendment suggested by expert bill-drafting and legislative deliberation are lost; (6) the system is clumsy, expensive, and can only be used when a "yes" or "no" vote is possible. The arguments in support of direct legislation may be stated as follows: (1) The voters thus far have used the power with intelligence and discrimination; (2) legislatures have been forced to consider the wishes of the electorate; (3) the corrupt influences of "special interests" have been checked; (4) popular participation of the electorate awakens an interest in government and acts as a political educator.

These new forms of democracy — the recall for shortening the tenure of office, the referendum and the recall of judicial decisions for an absolute veto, the initiative and plebiscite for coercion of the legislature or for independent legislation — place the electorate in a controlling political position.

CHAPTER XVI

THE ACTIVITIES OF THE GOVERNMENT

THE different governmental agencies are engaged in formulating and enforcing the will of the state. This will is expressed in the form of laws or commands that have for their object the creation and protection of rights and the promotion of the general welfare.

1. *Nature and Source of Law*

Holland says:

> Law is a general rule of external human actions enforced by sovereign political authority. . . . . The sole source of laws in the sense of that which impresses upon them their legal character is their recognition by the state, which may be given either expressly through the legislature or the courts, or tacitly by allowance, followed in the last resort by enforcement.

This general definition recognizes custom, judicial decision, and direct legislation in formulating the will of the state. The emphasis now is upon legislation. This is an age of parliaments and legislatures profoundly affected by public opinion.

Two great streams of civilization have influenced modern law, the Roman and the Teuton. The Roman system emphasized allegiance to the state, which issued and enforced uniform commands

through officers, with the laws operating upon all persons within the territorial jurisdiction of the state. The Teutonic system emphasized personal or tribal allegiance, with law arising not from the official command of the government, but from popular or customary sources and varying in different localities. The Roman law was uniform and rigid; the Teutonic, diverse and flexible. The invasion of Rome by the Teutons threatened the destruction of both systems of law during the Middle Ages; but, happily, the best features of each have survived to the present time. Various codes of Roman law were compiled during the Renaissance of the Italian cities where a growing trade and a restless mixed population demanded legal stability. The rise of the universities, beginning with Bologna, created interest in the study of Roman law, which soon spread with the assistance of the church and the Latin language to practically all of Europe. This unifying influence was continued by the Code Napoléon of 1804, which was mostly Roman in origin and fixed Roman law upon Europe and most of her colonies. England, cut off from the Continent, had the Roman law during the period of Roman occupation, and was profoundly influenced by it during the Middle Ages, but persisted in the use of the popular Teutonic system, which has spread to all English-speaking countries except Scotland, Quebec, South Africa, and Louisiana. Neither system completely supplanted, but rather supplemented, the other. The Teutonic invaders carried with them their system of local, popular

self-government based on representation. This has made the public law Teutonic, and the private law, including municipal and colonial administration, largely Roman.

2. Kinds of Law

There are various methods of classifying laws. In general, a law creating rights is *substantive,* and one providing the procedure for the enforcement of these rights is *adjective.* Another classification is: (1) A law enacted by a legislative body is *statute;* (2) one created by custom and enforced by the court, *common;* (3) one formulated by administrative officers to assist in the details of administration and having limited application, *ordinance;* (4) the formulation of the powers, scope, and limitations of government, usually enacted by an extraordinary agency, *constitutional;* (5) the general rules observed by states in their relations with each other, *international,* but this is not law for a particular state until adopted by the government of that state. Finally, there is private law which regulates the relation of individual to individual, and public law which regulates the relation of the government to the individual.

Private law deals with individuals, the government merely acting as an impartial umpire. The ordinary affairs of everyday life come under this law. Such matters as the law of contracts, torts, property, and inheritance are characteristic.

In public law the government itself is concerned, hence this law deals with the relation of the govern-

ment to the individual. Two or three branches of the public law will be described briefly.

Constitutional law is perhaps the most important branch of public law in modern times. The term in its present content is quite recent, although acts known as the "Constitutions of Clarendon" were promulgated in the reign of Henry II. The instruments for the government of the early trading companies and the colonies were rudimentary constitutions. But the term in its modern sense was used by the American commonwealths after they declared their independence of Great Britain. Since this time the term constitutional law means the fundamental, organic law of the state, and may be either written or unwritten, and, if written, may consist of one or several documents. The written parts of the English constitution consist of several documents, such as Magna Charta, Petition of Right, and Bill of Rights. The French constitution consists of three chief documents, while the Austrian constitution has five.

The written constitution is usually formulated by an extraordinary body such as a constituent assembly or convention, with final approval by the electorate; but sometimes it is enacted by an ordinary legislative body or granted and promulgated by a king. The constitution of Great Britain is largely unwritten and has been evolved in the course of history. Legally the constitution and statutes are on the same basis in England, as they both proceed from the same source. If the law deals with the distribution of the sovereign power of the state,

it is called a constitution, if not it is a statute; but both are legal. The French prefer a written constitution, symmetrical and logical, with nothing left to custom. The constitutions of the Americas are mostly written. The essential features of these written constitutions are: (1) a preamble, which states the reasons for the adoption of the instrument; (2) the enacting clause, which is the formal statement of the thing done and by whose authority it is done; (3) a bill of rights, or statement of fundamental principles guaranteed to the individual mostly against the ordinary branches of the government; (4) the government, its organization, powers, etc.; (5) the social state, which gives the boundaries and all subdivisions included therein; (6) the political state or the qualifications for the suffrage; (7) the amending clause or the legal procedure for changing the fundamental law; (8) the schedule or series of statements, temporary in character, which provide for continuity and regular transition of the government. This fundamental law in the American states sets the standard for all other law. All enactments having the outward form of law may be declared no law by the courts because they were enacted without competent legal authority. This is unusual and is the outgrowth or culmination of the power of the judiciary in England which had much to do with checking the executive, and differentiating the common law from the Roman law.

Bryce has suggested "flexible" and "rigid" as good terms to apply to constitutions. The flexible are enacted and amended by the same authority

that enacts statutes. This classification includes the constitutions of such states as Great Britain, Hungary, and Italy. The second class, or rigid, includes the written constitutions of other states. The flexible constitution is easy to amend, and thus adapts itself to the changing conditions of society and emergencies without breaking. Its faults are perpetual change and the liability that the fundamental law may be modified for mere passing whims or excited fancies. The rigid constitution is definite, stable, and, because of the difficulty of amendment, is relieved somewhat from the changes demanded by temporary popular passion and weakness. Its chief defect is that the difficulty to amend makes it sometimes stand in the way of the progressive development of the state. No state that has tried the rigid, written constitution has returned to the flexible, unwritten one. The eighteenth and nineteenth centuries have been periods for the adoption of the written constitution.

Administrative law in a sense supplements constitutional law. It goes more into minute details than constitutional law. Goodnow says: "It is that part of public law which fixes the organization and determines the competence of the administrative authorities and indicates to the individual remedies for the violation of his rights." France makes a large use of administrative law, which is applied by special administrative courts, already described above in connection with the judiciary.

The criminal law grew out of the idea that offenses formerly committed against other individ-

uals and redressed by these individuals, the government acting as arbiter, now are offenses against the government as well as against the individual, and must be prosecuted and punished by the government. A new science of penology has been developed, resting upon the theory of penalties. The government enacts a body of penal sanctions, and these are called criminal law.

3. Specific Activities of the Government

The primary functions of the government are constituent in nature and must be exercised to organize and protect the state against dissolution. Among these are included adequate machinery for enacting and enforcing the will of the state, the conduct of foreign affairs through diplomatic intercourse and treaties, the preservation of law and order at home, the establishment and maintenance of justice, the definition of property, and the protection of property and contracts. Every government needs to provide ways and means for its own existence. These may include the exaction of services from persons and the collection and expenditure of funds. Any government that cannot perform these primary functions is not worth the name.

The secondary functions of the government have a wide range and are concerned with social progress. Only a few of these can be mentioned.

The development of the modern factory system and the scientific determination of the germ theory of disease have emphasized the subjects of safety and health and made them matters of public con-

cern. Safety legislation includes such subjects as land liable to overflow, mines, railroads, ships and navigation, buildings, machinery, explosives and combustible materials, poisons, dangerous animals, and vermin. A large part of modern legislation is devoted to the subject of public health. Closely connected with legislation affecting safety and health are laws regulating various forms of insurance, such as property, life, sickness, accident, and old age, together with workmen's compensation and employers' liability laws, pure food and drug laws, with adequate provision for inspection and enforcement.

The government is intimately concerned with improving public morals because immorality is closely connected with crime. Immorality impairs community life. The government legislates against gambling, which may include games of chance, skill, contests, horse races, lotteries, certain forms of speculation; also the liquor traffic, and various forms of vice and brutality. Closely related to morals is the subject of education, which the state carefully supervises or regulates if in private hands, but usually conducts and supports from public funds.

The government plays an important rôle in economic affairs. It grants to a few persons certain privileges in order to stimulate activity of a creative kind. Among these privileges may be mentioned trademarks, patents, and copyrights. Closely connected with these is the participation of the government in many industries. Among these may be

mentioned the granting of subsidies and bounties. Germany has been prodigal in this respect, and the United States has given millions of acres of land to the support of railroads and canals. Sometimes the government assists by giving its credit to a private concern. A protective duty is a good example of government aid to private enterprise.

Sometimes the government undertakes to equalize terms of competition and to give protection against fraud. The government establishes a system of weights and measures and fixes certain forms of dealing, provides inspection laws to secure quality and wholesomeness and to protect the community against substitutes, imitations, and adulterations. It also protects against deception which easily attaches to peddling, auction, bankrupt, and fire sales, ticket brokerage, also to collection, employment, and immigrant agencies. In addition to this, it passes laws to secure the fidelity of agents, depositories, and trustees.

Debtors are protected by means of usury and bankruptcy laws, while laborers secure protection through the labor contract to equalize the strength of the contracting parties by fixing hours, conditions under which work is to be performed, and the method of making payment of wages and sometimes the fixing of a minimum wage, especially for women and children. In some states the governments furnish various forms of insurance against unemployment, accident, old age, etc.

The government undertakes to regulate combinations in restraint of trade and to prevent harmful

trusts and monopolies. For enterprises of a semi-public nature, or business affected with a public interest, the government grants franchises and charters for the purpose of securing accounting, publicity, and efficient service. In all these where a public utility is furnished, the government should insist on: (1) service to all without discrimination; (2) reasonably adequate facilities and diligent service for a reasonable compensation. Sometimes the government carries on public works to promote industries, or where enterprises could not be carried on privately because of insufficient returns. Among these are the construction of internal improvements, such as roads, lighthouses, dikes, harbor improvements, waterworks, fire protection, gas and electric lights, street and steam railways, irrigation works, telegraph and telephone, express facilities; also the consular service, collection of statistics, coinage of money, postal service, maintenance of theaters, bathhouses, and lodging houses. Finally, the government regulates certain employments by requiring licenses or certificates. Among these may be mentioned teachers, attorneys at law, physicians and surgeons, midwives, nurses, pharmacists, dentists, optometrists, embalmers, veterinarians, barbers, horseshoers, certified accountants, electricians, detectives, architects, auctioneers, engineers. This is for the purpose of excluding incompetents.

4. The Scope of Governmental Activity

Political thinkers have been divided for many years into two main camps: (1) individualists,

who believe that government should preserve the peace, leaving the individual freedom of action; and (2) socialists, or those that claim the government should manage everything, even to operating all forms of business.

Largely through the influence of Adam Smith, who published his *Wealth of Nations* in 1776, there was a reaction against the restrictive policy of most European governments. From his teaching there developed the *laissez faire,* or "let alone" policy; in other words, that individualism is the best method of promoting the welfare of society. The extreme individualists hold that government is an evil, but it is necessary because of man's present imperfections. While man is perfecting his moral nature the government should merely prevent one person from interfering with the equal rights of another. This rests upon the doctrine of natural rights and includes only a system of governmental restraint.

Another class, known as "moderate individualists," believes with Mills that

> the functions of government embrace a much wider field than can easily be included within a ring-fence of any restrictive definition, and that it is hardly possible to find any ground of justification common to them all, except the comprehensive one of general expediency.

This class holds that a large measure of individual freedom leads to best results for several reasons: (1) The individual knows his own interests better than the government can know them, and that his

private interests are not antisocial; (2) that the private individual, because of his powerful personal interest, will make a success of his undertaking where the government officials, lacking direct personal interest, will fail, especially if there is a poor civil service system and corrupt administration; (3) if the undertaking is conducted by the government and is a failure, the enterprise may and sometimes is supported by taxation instead of being eliminated as would happen if a private individual should make a failure of it; (4) individualism cultivates self-reliance and initiative. Again quoting from Mill:

> A people among whom there is no habit of spontaneous action for a collective interest, who look habitually to their government to command or prompt them on matters of joint concern, who expect to have everything done for them except what can be made an affair of mere habit and routine, have their faculties only half developed; their education is defective in one of its most important branches.

Socialism exalts the government to the extent of claiming almost infallibility for it. Socialism has never been tried in any state except in a small way in such communities as New Harmony and Oneida, and in these proved a failure. It therefore represents an ideal rather than an established fact. Karl Marx, the German socialist, in his *Capital* severely arraigns the present system of individualism and capitalism, alleging that the present system of private property rests upon the aggression of the strong against the weak, the former having seized the means of subsistence and reduced the

great masses of workers to a system of wage slavery. The capitalists having possession of the machines of production have in their hands the power of amassing large profits at the expense of the laborer, who is the real producer. He also points out the wastes of competition involved in individualism.

On the positive side, the socialists would abolish private enterprise by substituting government management of all means of production. Some hold that everything produced should be common property, each person sharing according to his needs, with a total abolition of the wage system. Others would retain the wage system and compensate each workman according to his efficiency, which would be determined by the government. In short, all branches of industry would be socialized, and the government would become a gigantic, cooperative, industrial agency of all the people.

Socialism is growing rapidly in Australia and western Europe. At the election of 1916 in the United States the Socialists cast approximately a million votes. All modern governments have marked socialistic tendencies, to say the least.

The true extent of governmental activity undoubtedly lies between these two extremes — individualism on the one hand and socialism on the other. Government exists as an agency of the state "to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

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